Public Utilities

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How an Inflated Currency Would Affect the Utilities

The banking crisis that reached its climax on inauguration day, the declaration of a nation-wide bank holiday, and the emergency steps that were taken to supply needed currency have given rise to speculation concerning the measure of "inflation," if any, to which United States money is being or may be subjected. In the following article the author (who is a well-known authority on finance) views the current situation from the viewpoint of the utility industry—and incidentally, of the state commissions.

BY ANDREW A. BOCK, PH.D.

DEVELOPMENTS in our banking situation, the suspension of the gold standard, and the railroading of emergency legislation by Congress have preoccupied the American people since the inauguration of President Roosevelt on March 4th.

These epoch-making events have to some extent distracted public opinion from the insistent propaganda for some kind of inflation which has been carried on in the political arena since last November. Currency inflationists have always had their best audiences towards the end of each period of severe depression, and the fact that we have apparently passed that stage of the business cycle may afford some comfort.

The temporary suspension of the gold standard as enacted early in March is in itself not yet of inflationary character nor is the new currency legislation. However, as it gives the government authority and the mechanism for a tremendous increase of paper notes not covered by gold but by government credit or any kind of acceptable bank assets, the potential danger of inflation is present.

Most of the proposals to bring back prosperity through tinkering with the currency system are the work of amateur economists and the result of misunderstood monetary theories. But the authors of all these plans have at least one thing in common: They do not want inflation for itself but only as a medium for attaining higher commodity prices and for stimulating business, thus counteracting the process of deflation which now has been carried on for over three years.

There is widespread misunderstanding as to the exact implications of the term "inflation." The word is here used in the classical economic sense, indicating an increase in active purchasing power without equivalent gain in the production of actual wealth. This objective can be attained in various ways and the proposals submitted by our representatives in Washington offer an interesting collection of such schemes. The most conspicuous are free coinage of silver at a fixed ratio to gold, the issuance of irredeemable paper currency, the reduction of the gold content of the dollar, and acceleration in the credit inflation which is already under way.

Most of these plans are based upon the quantity theory of currency, which in its simplest form means that by increasing the amount of money in circulation with no change in the volume of goods available the price for the latter has to go up under the pressure of increased demand. However, this formula is too simple to be true and is subject to many qualifications.

Currency in circulation in this country—paper money and coins —are normally used for only about 10 per cent of total business transactions; the balance is carried on through the use of checks, bills, money orders, and other credit instruments devised by modern banking. As a matter of fact, the amount of currency in circulation at the present time is about two billion dollars larger than the total at the peak of prosperity in 1929 when we did a substantially larger volume of business. When this increase has not been able to check the process of deflation, it is highly questionable whether a further injection of two or three billion dollars, as can be done under the existing emergency provisions, would materially change the present situation.

These quantity theorists overlook completely the element of velocity. A dollar turned over 100 times during one year does the same business as 100 dollars used only once. Velocity does not depend primarily upon quantity but upon the intangible factors of confidence and, paradoxical as it may seem, fear. Confidence that prices will remain stable, that the budget will be balanced, and that no new taxes are likely to interfere with business will stimulate turnover; so will the fear that the value or purchasing power of the currency will decline and that prices will correspondingly soar. The latter phenomenon can be witnessed during periods of drastic inflation when the intrinsic value of the currency in terms of gold declines from day to day at an accelerated pace.

Another group of inflationists advocates what its members call "credit inflation," which is often dif-

ferentiated from outright currency inflation although fundamentally both processes are much the same. The difference is that currency inflation operates more openly and its workings are more visible and easily understandable by the man in the street. Credit inflation works more subtly and its effects are not sensed so readily. The total amount of currency in circulation is published weekly and commented upon in the financial columns of our dailies, while the changes in the total amount of credit outstanding are not subject to such wide publicity.

As a matter of fact we are already in the midst of an enormous credit inflation. We have created a very substantial amount of government credit through the issuance of notes on the basis of government bonds. The large amounts of additional credit pumped into the market by the Federal Reserve Banks and the Reconstruction Finance Corporation should be more than sufficient to support a substantially larger volume of business than is transacted today. These credits have lacked the element of confidence which is necessary in order for them to become active and thus influence the price level. On the other hand, this system which our government has applied through the Federal Reserve Banks and the Reconstruction Finance Corporation has the advantage of being controllable to a certain extent, which cannot be said of the other plans.

If our political inflationists only would take the time and trouble to consider the consequences of their proposals and think them over logically to the bitter end, they would probably change their minds. However, they apparently either lack the faculty to do so, or else they sponsor their pet schemes for political reasons (such as fulfilling promises given to their constituents) in which case logic would be of no avail.

For the purpose of argument let us assume that Congress would seriously consider proposals to reduce the gold content of the dollar or to eliminate the government's deficit through the issuance of irredeemable paper currency. As popular attention is aroused by the discussion of such monetary questions and as our newspapers and magazines during the last few years have thoroughly informed the public about the possible consequences of such monetary policies, things would move rapidly while the debates on such inflationary plans would go on.

If, then, the convertibility of currency into gold were again a legal possibility the ensuing immediate run on

¶ "Public *utility enterprises which carry a large proportion of their investments in fixed assets and capitalization in bonds would benefit substantially by a devalorization of the dollar. Their bonds, almost without exception, carry the gold clause and . . . this obligation to pay in gold would be nullified.*"

our gold reserves would drive us off the gold standard without much ado. How quickly that can be done, everybody will recognize from the experience of the first few days in March, when fear engendered by the banking crisis caused a similar situation resulting in the present suspension of the gold standard, although our currency is still on a gold basis according to the statement of high government officials.

With a prospect of permanent reduction of the gold value of the dollar and a possibility of protracted nonconvertibility of the currency, people then would turn to real values such as commodities, real estate, land and other property, or securities representing equity in these things. Bond prices would fall tremendously under the onslaught of wholesale liquidation in the general impulse to change such fixed obligations expressed in money values into real values which would benefit by the cheapening of the dollar. Common stocks, especially of such corporations as have only small cash assets, would be a desired medium for avoiding the effects of the expected currency depreciation. In this case stocks of corporations with large fixed charges would be preferable, inasmuch as this burden would be reduced in proportion of the rate of devaluation of the dollar, thereby increasing the equity for the common stock.

Commodities and real estate, of course, would represent the most desirable *media* for saving the intrinsic value of invested capital during such a period of money devalorization. The tendency toward investment in such tangible objects would certainly have the desired result of a price increase in primary commodities, including agricultural products. Thereby the farmer would be helped and the burden of his mortgage debt reduced correspondingly.

That is as far as the process of thought of the advocates of inflation goes; here they mostly stop, probably because of fear of the final results.

However, the same reasons which would bring about a rise in prices for farm products would also cause a price increase for manufactured goods and there is no logical reason why this process should automatically do away with the discrepancy between the price level for agricultural products and that of manufactured goods as it exists today, to the grave disadvantage of the farmer. Certainly the latter would experience some relief from his debt burden, but knowing the farmer's psychology, it is reasonable to assume that soon he would be again in debt, having been freed from his previous obligations in such an easy fashion—provided, of course, that he could find willing lenders. Experience in various European countries after the war corroborates this theory.

Other beneficiaries of such an inflation would be the government itself and corporations which have a large amount of fixed debts. In this connection one factor is of great importance—the gold clause which is to be found in all government bonds and also in the fixed obligations of the majority of our corporations, including many utility corporations. This clause calls for payment in United States gold coin of the weight

The Effect of an Inflated Currency on Utility Rates

"THERE is one factor which would completely offset the benefits derived by public utility enterprises from inflation. This is the rates charged to their customers, which are subject to the decisions of state regulatory commissions. . . . What the utility companies would gain through a reduction of their debt burden, they would lose through the retardation in the adjustment of their rates to the new value of the currency."

and fineness of the date of issue.

Experience has demonstrated that such a clause in case of an emergency such as the official debasement of the currency or the suspension of the gold standard, is practically of no value. Keeping the gold clause intact would mean an increase of the governmental debt which would nullify the entire effect of the devalorization of the currency and would automatically call for a substantial increase in taxes or for new borrowing. The legal machinery to increase taxes would be too slow to keep pace with the government's growing needs. New borrowing, however, would become practically impossible as faith in the government's credit and its bonds would have been too badly shaken by the inflationary measures. Consequently, the only way out of this dilemma would be a renewed dose of inflation to provide the necessary funds, and so on until the bitter awakening.

As under such conditions it would be impossible for the government to maintain the gold clause in its obligations, it is useless to speculate whether such an act would be constitutional, as laws are broken in such national emergencies. When the government has thus declared null the gold clause in its own obligations it cannot logically force its subjects having similarly stipulated obligations to live up to the letter of such contracts and consequently the gold clause in all dollar obligations would be of no avail.

For this reason public utility enterprises which carry a large proportion of their investments in fixed assets and capitalization in bonds would benefit substantially by such a devalorization of the dollar. Their bonds, almost without exception, carry the gold clause and on account of the circumstances mentioned above this obligation to pay in gold would be nullified. They could be repaid later in depreciated currency and would be obtainable in the market at a discount from their par value due to the general depression in the bond market resulting from the currency depreciation.

So far so good. But there is one factor in this situation which would completely offset the benefits

derived by public utility enterprises from inflation. This is the rates charged to their customers, which are subject to the decisions of state regulatory commissions.

ONE fact is sure; that the current propaganda for rate reductions would tend to disappear since it would no longer have any logical basis. On the other hand, the most important question would be whether the public utility companies would be able to obtain rate increases in accordance with the progressing devaluation of the currency quickly enough to prevent losses, or whether they would be subject to delay and thereby lose money, as their operating expenses, which are not subject to state regulation, would certainly tend to increase in proportion to the rate of currency depreciation.

The bureaucratic tendency to slow and deliberate action by such regulatory bodies is too well known to permit any hope that their decisions would be as rapid as the progress of the inflation, or that they would allow a sliding rate scale on the basis of some commodity price index. The practical result obviously would be that what the utility companies would gain through a reduction of their debt burden, they would lose through the retardation in the adjustment of their rates to the new value of the currency. In this situation the utility companies with large funded debts would be in the most favorable position.

A FURTHER factor to be considered by public utility enterprises is the contracts with large industrial customers which run for several years. It is known that during the last two years of depression many industrial customers of public utility companies have paid the minimum amounts fixed in such long-term contracts although they did not take the amount of electricity contracted for. Consequently, it is reasonable to assume that with a revival of industrial activity which, it is hoped, would come along with inflation, but which is by no means certain, these industrial customers would insist upon fulfilment of such long-term delivery contracts at the fixed rates, which, of course, would be unprofitable for the public utility companies.

A similar situation would develop for railroads as freight and passenger rates are subject to the rulings of the Interstate Commerce Commission. The speed with which this commission customarily works also suggests that rate increases would lag far behind the advance of the currency inflation and cause corresponding losses for the railroads. Similarly to the illustrations given for public utility enterprises, the railroads with the largest amount of fixed debts would benefit the most from inflation as the decline in the real value of the fixed charges would tend to offset the losses resulting from the retarded rate adjustments. As any increase in the rates would be announced some time before they become effective, there would be always a sharp bulge in shipments and passenger traffic to take advantage of the old rates, a development which would cause unnecessary and undesirable instability of operations.

A FURTHER danger for public utilities and railroads brought about by any inflation would be the tendency

to overexpend and to increase the investments in real values such as new plants, machinery, and transmission lines. They usually become a burden after the process of inflation is ended and business and industrial activity settles back to normal levels.

The reason why these results must be expected from any currency inflation of a radical type is that once such an inflation is well under way, it is extremely difficult to stop it, and a control, although claimed by its sponsors, is almost impossible. Like the trend of the prevailing depression, events in such an inflationary process move in a vicious spiral only at a greater speed.

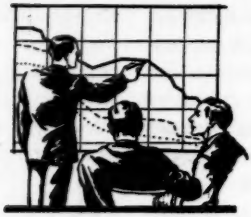
WHAT uncontrolled inflation can do to a nation is best illustrated by the example of Germany. A thorough study of what happened in that country during the years after the armistice until the fall of 1923 when the dollar was equivalent to 4.2 billion marks, is the best method of discouraging any advocate of inflationary measures even of a moderate form. Germans later found out that during that period of apparent prosperity and flourishing foreign trade they had lived upon capital and substance, and that they had sold out the assets of the nation, had become impoverished, and gained nothing by this inflation. This knowledge also explains why despite prevailing economic difficulties at the present time Germany tenaciously clings to the gold standard and has a horror of all proposals for tinkering with the currency and of once again traveling the road of inflation.

WE are fortunate that the new administration has taken a stand for sound currency which means that it will be opposed to any drastic and unsound inflationary methods. Its economy measures enacted during the past two months are of decidedly deflationary character and, therefore, tend to offset any immediate inflationary possibility which might arise from the issuance of non-gold covered notes. Furthermore, leading business men, bankers, and politicians with a well-founded knowledge of financial matters have raised their voices against any experiments with the currency and have strongly advocated an honest dollar as the basis of our monetary and economic system.

Despite the apparent advantages which one part of the nation, the debtor class, would derive from a cheapening of the dollar, taking the nation as a whole, the disadvantages and losses inflicted upon others would by far outweigh these benefits, and, therefore, it is to be hoped that our country will continue to preserve a sound currency system to its own advantage and the benefit of the world at large.

The Task of Making Utility Securities Sound Investments

The opportunity—and the duty—that rests upon both the state commissions and upon the public utility corporations themselves, will be pointed out by SAMUEL CROWTHER, *the nationally known authority and writer on business problems, in the next issue of* PUBLIC UTILITIES FORTNIGHTLY—*out May 11th.*



How the Sliding-scale Basis of Rate Making Works

So widespread has been the interest expressed in the unique system of establishing power rates in the nation's Capital (originally described in PUBLIC UTILITIES FORTNIGHTLY *in the issue of November 27, 1930) and also in the reasons for making recent modifications in it (reported in the March 30, 1933, issue), that the chairman of the District of Columbia commission, in the following article, not only reviews the plan as it has been developed up to the present time, but expresses the opinion that a similar method of rate making should be established to control gas and telephone rates.*

By MASON M. PATRICK
CHAIRMAN, PUBLIC UTILITIES COMMISSION, DISTRICT OF COLUMBIA

BECAUSE of the widespread interest in the unique method of fixing power rates in the District of Columbia the public utilities commission has been literally bombarded with inquiries concerning the recent changes which have been made in it.

First of all, let us set forth the facts which led to the adoption of this method, describe how it has been dealt with by the commission, the manner in which it has been applied, and report the results which have been obtained.

THE Potomac Electric Power Company serves the District of Columbia, some of the adjacent territory in Maryland, and (through a subsidiary) some of the adjacent territory in Virginia.

Shortly after the public utilities commission of the District of Columbia came into being in 1913 it commenced a valuation of the property of the power company used and useful in the public service. This was completed, and by its order dated May 2, 1917, the commission fixed the value of this property at $11,231,-170.43. Shortly thereafter an order was issued establishing rates for electricity which were estimated to yield a net return of about 7 per cent upon the fair value of the property as found by the commission.

The power company appealed from the order of the commission fixing its value, claiming that it was unlawful, unreasonable, and inadequate. The supreme court of the District of Columbia upheld the order of the commission in an opinion handed down

March 2, 1920. From this decree the power company appealed to the court of appeals of the District of Columbia on the ground that the commission and the supreme court had based the value found upon 1914 prices whereas at the date of the value, as set forth in the commission's order, December 31, 1916, prices had risen sharply, and, therefore, that the value of the company's property was much in excess of the figure found by the commission. The court of appeals sustained the power company and remanded the cause for further proceedings.

The case was then carried to the Supreme Court of the United States.[1] Briefly, the Supreme Court in its decision held that it was without jurisdiction, as in an administrative valuation case no constitutional question was involved; it further held that Congress had conferred upon the courts of the District of Columbia power to review the action of the public utilities commission in fixing a value of a utility's property, and that a determination by the court of appeals of the District of Columbia was final. The appeal to the Supreme Court of the United States was, therefore, dismissed.

The power company had, likewise, appealed from the commission's order fixing rates and sought an injunction forbidding these rates being put in effect.

On August 21, 1917, a temporary injunction was awarded, conditioned upon the company making and preserving its records and accounts so that in case the injunction should thereafter be dissolved the amount of any excess charges paid by the consumers might be readily determined and repayment thereof be made by the power company. The company was also required to execute and file a sufficient bond to make good to the consumers all sums which might be justly their due.

As the validity of the commission's rate order evidently depended upon a final determination of the value of the company's property, nothing further was done in this rate case pending a decision in the valuation case.

This latter case dragged on from 1917 to 1924, during which time the power company continued to charge the rates in effect prior to the granting of the injunction, but set aside or impounded from its earnings the difference between the billing rates and the rates ordered by the commission from time to time during this 7-year period.

THE domestic rate charged by the power company during these years was as follows:

During the first 120 hours' use, monthly of the connected load, per kilowatt hour	$ .10
For excess use	.05
Minimum charge	1.00

The total amount accumulated in the impounded fund up to the 31st of December, 1924, was $6,401,576.81.

Even in 1924, when the valuation case had been pending for seven years, there seemed to be no prospect of an early decision. Paragraph 18 of the Act of Congress which created the commission, authorized the fixing of rates in accordance with a sliding-scale arrangement, provided, after investigation, it was found by the

[1] Keller *v.* Potomac Electric Power Co. (1923) 261 U. S. 426, 67 L. ed. 731.

commission to be reasonable and just, practicable and advantageous to all parties. The commission discussed at length the possibility of making such an arrangement and concluded that it would be proper to do so. The power company expressed its willingness to enter into such an arrangement and to have electric rates adjusted annually in accordance with the sliding-scale method. The details were then worked out jointly by the commission and the representatives of the company, and were approved by both parties.

An agreement was also reached as to the value of the company's property. Both parties then went before the court, announced that they had settled all questions in controversy between them, and asked the court to embody the details of such settlement in a decree.

Such a decree was handed down by the supreme court of the District of Columbia on the 31st of December, 1924. Both of the pending cases—the rate case and the valuation case—were settled by this decree which, thereafter, has been generally known as the "Consent Decree." This fixed the value of the company's property as of January 1, 1925, at $32,500,000; established depreciation rates fixed by the relation between the depreciation reserve at any time and the value of the property at that time; provided, that the rate base for any year following 1925 should be ascertained by adding to the rate base at the end of the preceding year the net additions and betterments during the year, undepreciated but weighted.

It further provided that if in any year the net return upon the rate base should be in excess of 7½ per cent, rates for the following year should be fixed so that the gross receipts of the power company should be diminished by one half of such excess. It also provided that if the net return should fall below 7½ per cent by varying amounts over different periods of time, the commission should promptly increase rates so as to yield 7½ per cent.

It was decreed that the impounded fund, with interest at 6 per cent up to the 31st of December, 1924, less certain taxes, should be divided equally between the consumers and the company. This resulted in refund to the customers during the year 1925 of $2,297,655.44. As it was evident that it might be impossible to locate all of the customers served by the company during the 7-year period while the impounded fund was growing, it was further provided that any amounts unclaimed at the end of a period prescribed by the court should be considered as income of the com-

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pany and prorated over a term of twenty years.

Beginning with the year 1925 down to and including the year 1931 rates were fixed under the terms of this sliding scale. Rates were reduced for each of the six years following 1925, the domestic rate for 1931 being 4.2 cents a kilowatt hour flat.

THERE is little doubt that when this sliding-scale arrangement was made, it was the expectation, not only of the commission but also of the company, that the latter's earnings would probably be somewhere in the neighborhood of the 7½ per cent return stipulated, and that if in any year this rate of return was exceeded, the scheduled reduction for the following year would bring the rate of return back to about this same figure.

The greatly increased use of electricity and of electrical appliances was not foreseen in 1924. These varying uses of power and the lower rates put into effect resulted in more business for the power company each year, and every year to and including 1931 its gross income and its net operating revenue were larger than for the year preceding. The average rate of return earned upon the company's rate bases for these years was about ten per cent.

The fact that this net return was so great attracted the serious attention of the commission in 1930, during which year the accounts of the company were very closely scrutinized. Early in 1931 the commission called the company's attention to what it considered excessive earnings and suggested that the terms of the sliding scale might properly and justly be modified so as to bring about a lesser rate of return. The company declined to discuss with the commission any modification of this sliding scale. On the other hand, it insisted that the court decree had fixed the terms of this arrangement and that the commission alone was powerless to change them. The company took the position that the only way in which these terms could ever be altered would be by agreement of both parties, this to be presented to the court which had entered the decree, accompanied by a joint request for the court to modify its decree in accordance with any such agreement. But the company declined to agree to any such changes.

AT about this time there was handed down by the supreme court of the District of Columbia a decree in equity (No. 37,623) the so-called Packers' Case, in which the court seemed to hold that a consent decree could be altered by the court at the instance of either of the two parties thereto, provided the reasons alleged for such modification were convincing to the court.

The commission at first was inclined to act in accordance with this court decision and to petition the supreme court of the District of Columbia to alter the terms of the sliding scale embodied in the consent decree, basing such application upon changed conditions and upon facts which it was prepared to lay before the court.

Paragraph 18 of the act creating the commission, in addition to authorizing the sliding-scale method of fixing rates, contained the further provision that "such arrangement shall be under the supervision and *regulation*

How the Stipulated 7½ Per Cent Return to the Company Was to Be Maintained

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of the Commission," and further, that "the right to alter or amend all orders relative thereto (*i. e.* rates, charges, and so on) is reserved and vested in the commission notwithstanding any such arrangement."

Based upon these provisions of law, the commission, on June 8, 1931, issued an order modifying the terms of the sliding scale so as to provide that if the rates thereafter yielded more than 7 per cent in any twelve months' period, the excess over and above 7 per cent should be used in a reduction of rates to be charged the public as follows:

If the said excess shall be not more than one per cent of the rate base, rates for the following twelve months, based upon the business done during the twelve months in which such excess occurred, shall be adjusted so that the gross receipts of the company shall be reduced by one half of such excess; if the excess shall be more than one per cent and not more than two per cent then three fourths of the excess shall be used for the reduction of rates, and if the excess shall be greater than two per cent, five sixths of the excess shall be thus used. Due provision was likewise made in this order for raising rates in case the company's net return fell below the 7 per cent figure. It also included, and restated the consent decree provision fixing the depreciation rates.

FROM this order the company appealed to the court asking that it be set aside, alleging three reasons for the desired court action:

(1) That the sliding-scale arrangement originally framed had been embodied in a decree of the court, and that the commission was powerless of its own motion to make any changes in the terms of such scale.

(2) That the rate of return which the commission sought to fix in its order was noncompensatory and, therefore, unjust.

(3) That the rates which would be fixed under the terms of the sliding scale as modified by the commission would be confiscatory.

THE commission's reply to these contentions of the power company was, taking them in inverse order:

(3) That the commission had fixed no rates for power but had merely set forth a method by which the rates would be fixed, and that until rates were actually fixed and had been in effect for a sufficient length of time, there would be no way of determining whether or not the return to the company at such rates would be adequate or inadequate.

(2) That the commission's order did not attempt to fix a rate of return upon the value of the company's property; that charging such rates as the commission would fix under the modified sliding scale, unless conditions changed decidedly, the company, in accordance with the experience of past years, could and would make more than 7 per cent.

(1) The commission called especial attention to the fact that in the consent decree it was clearly stated that the terms of the agreement between the commission and the power company met with "the approval of the court *in so far as the same are within the jurisdiction of this court.*"

The commission believed that the use of the italicized words showed that the court had clearly in mind the provisions of paragraph 18 of the act creating the commission, furthermore, that no decree of a court could undertake to estop the commission, for all time, from the exercise of its legislative functions in fixing rates to be charged by the utilities under its jurisdiction.

The supreme court upheld every contention of the commission in this case, handed down a decree affirming the order of the commission but making certain changes in the terms of the sliding scale that the commission had embodied in the order.

FROM the supreme court the company appealed the case to the court of appeals of the District of Columbia. On the 6th of February, 1933, before it came on for trial in that court, the commission and the company, after rather lengthy negotiations, settled the matters in controversy between them. The gist of this settlement was that the decision of the supreme court of the District of Columbia, as announced by Mr. Justice Luhring, in so far as it relates to the power of the public utilities commission to modify the terms of the sliding-scale arrangement, shall stand. This means that at any time in the future the power of the commission to modify the terms of a sliding-scale arrangement then in effect cannot be questioned. It was, however, recognized that the company has the right in the future, to appeal, upon the ground of unreasonableness, from any order of the commission making changes in a sliding scale, and has also the right at any time to apply to the commission to make changes in any existing sliding scale.

This settlement set up what is in effect a new sliding scale.

The rate base is to be ascertained as in the original sliding scale. The depreciation rates as originally fixed remain unchanged.

If in any year the net return upon the rate base should be in excess of 7 per cent and not more than 8¼ per cent, one half of such excess shall be used for the reduction of rates during the following year; if this net return exceeds 8¼ per cent but does not exceed 9 per cent, an additional amount,

60 per cent of such excess over and above 8¼ per cent, shall be used for the reduction of rates; if the net exceeds 9 per cent then an additional amount of 75 per cent of such excess over and above 9 per cent shall be used for the reduction of rates.

If in any two consecutive years the company's net return is less than 6¾ per cent of the rate base for each of these years, or if in any consecutive twelve months period the company's net return is less than 6½ per cent on its rate base for the same period, the commission shall promptly increase rates so as to yield as nearly as may be 7 per cent upon the rate base as of the date of order effecting such changes in rates.

Hereafter rates will be fixed in accordance with this new and revised sliding-scale arrangement.

As these matters were being litigated when it became time to fix rates for 1932, the commission and the company agreed that the amount by which rates might be reduced should be approximately one half way between an amount which would have been determined under the original sliding scale as contained in the consent decree and the terms of the sliding scale as set forth in the decree of the supreme court affirming the commission's order modifying this sliding scale.

The consumers benefited by the return to them of something more than $2,250,000 of the fund which had been impounded while the valuation case was pending.

The rates for the years 1926–31 were adjusted as follows:

The company's reports showed the net operating revenue for the first ten months of each year; to this was added the amount of the estimated earnings during November and December. The excess over and above 7½ per cent of the rate base for each year was determined, and one half of it was the measure of the proposed reduction of the company's gross earnings for the following year. Based upon the accumulated experience of past years, the company recommended the amounts by which each of the rate schedules should be reduced.

The commission had likewise been noting the power sold to the different classes of customers, the revenue derived from each class, and from time to time had before it criticisms or complaints concerning some of the schedules. These matters were discussed with the company, and the amount by which each schedule might be reduced was finally fixed. Before the rates for 1931 and 1932 were finally ordered, there was a public hearing at which the proposed rates were discussed, and suggestions were offered by the ratepayers. Prior to 1932 the new rates were made effective January the first, each year.

¶ "From *what was practically a flat rate of 10 cents a kilowatt hour for domestic use, this has been gradually reduced until the rate for the year just past, 1932, was for the first 50 kilowatt hours 3.9 cents; for the next 50 kilowatt hours 3.8 cents; for all over 100 kilowatt hours, 3 cents.*"

THE results of the company's operations for the months of November and December had been estimated in order to determine the amount of the reduction for the following year. While these estimates were subsequently found to have been fairly close, it is now thought better to have the actual results for a year, and, therefore, the new rates for 1932 were made effective on the 1st of February. Naturally, if it is necessary to have a twelve months' actual record, this will mean that the new rates each year must be made effective a month later than the year before. To obviate this, it is now proposed to ascertain what would have been the results if the business done in January had been at the rates in force for the rest of the year. While not exact, this will be better than merely estimating for one or two months.

The following are the amounts by which rates were reduced each year:

1925	$762,000	1929	$625,000
1926	352,000	1930	660,000
1927	430,000	1931	830,000
1928	338,000	1932	860,000

FROM what was practically a flat rate of 10 cents a kilowatt hour for domestic use, this has been gradually reduced until the rate for the year just past, 1932, was for the first 50 kilowatt hours 3.9 cents; for the next 50 kilowatt hours 3.8 cents; for all over 100 kilowatt hours, 3 cents.

The domestic consumers during 1932, at these rates, paid for the electricity used by them the sum of $3,177,465. Had they used the same amount of power at the rate charged during the first year, 1925 (when the sliding scale went into effect), they would have paid $5,825,016.

The average consumption of domestic power in 1920 was 510 (estimated) kilowatt hours a year; in 1925 it was 590 (estimated) kilowatt hours, and in 1932 it was 725 (actual) kilowatt hours.

Between 1925 and 1932 the rate reduction was about 50 per cent, and the increased average consumption was about 21 per cent.

THESE figures indicate the financial benefits to consumers which have resulted from the application of this sliding-scale method of fixing rates. In addition, it should be noted that during the years this has been done, it has been possible to make changes annually in accordance with prevailing conditions and without the necessity for any costly effort to establish a rate base each year. It has also been possible to correct any inequalities in rates developed during the year, and thus to make changes promptly, when the result of the application of particular rates was known, and such changes were found to be warranted.

This method of fixing rates has likewise been of benefit to the power company. It has been saved the considerable cost of a valuation of its property, and has been assured that in case its net return was less than that which was expected following the application of any particular rate schedule, the commission could, in accordance with the pertinent provisions of the sliding scale, promptly raise rates to bring about a proper return to the company.

THE power company is entitled to much credit for its coöperation in bringing about the gratifying results which have flowed from this

method of fixing rates. The company is well managed, its affairs are excellently conducted, and there has been not the slightest evidence of any attempt to pad the operating expenses by unduly increasing the salaries of officials or by failure to purchase supplies at the lowest obtainable prices; on the contrary, the company has made every effort to operate its plant in the most economical manner possible. It is true that the company is not restricted to making no more than a certain fixed net return, but at the established rates each year could earn whatever net revenue might be the result of its economical operations.

The company, no doubt, plainly saw that lower rates increase consumption of power, and made possible, knowingly, the maximum reduction of rates which could be effected each year.

The company submits to the commission monthly reports in great detail, which make possible a check upon all items of expenditure, give reliable data covering costs of the various items which make up the total of the operating expenses. Report is also made at least once a year of the total number of customers in each class, of the amount of power furnished under the different rate schedules, of the revenue derived from its sale.

These data enable both the commission and the company to observe the result of the different rates charged for power furnished to the different classes of customers, to adjust any inequalities annually.

WHEN this sliding-scale method was adopted at the beginning of the year 1925, it was an experiment—an experiment which has worked satisfactorily. But during the years it has been in effect, experience indicates that there should be some changes made in the details of the method.

If this commission should enter into a similar arrangement in the future, it would incorporate therein a provision for the possible redetermination of the value of the property, or for a revision of the terms of the sliding scale, or both, at the end of fixed periods of time, say every five years, and possibly a provision for intermediary adjustments in case extraordinary conditions should arise.

It should also be provided that the utility has the right at any time to request changes in the terms of the sliding scale and to support such a request with facts or arguments.

The basis upon which rates for the following year should be fixed must be specifically stated. The commission has ruled that these rates are to be based upon the business done in the year just concluded. This makes unnecessary any forecast of the business to be done during the year while the new rates are in effect.

THE District of Columbia has now had eight years' experience with this sliding-scale method of fixing power rates. The commission is firmly of the opinion that it has worked well, that it has been fair to both the consumers and to the company, and that the benefits which both have derived from it are most substantial.

Holding this view, the commission has desired to extend this same method to other utilities in the District of Columbia, particularly to the gas and telephone companies.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

MICHAEL ARLEN
Novelist.

"Undoubtedly the air is the only system of transport that will survive."

HARRY W. LAIDLER
Director, League for Industrial Democracy.

"Public ownership (of banks) would reduce the cost of doing banking business."

FREDERIC C. WALCOTT
U. S. Senator from Connecticut.

"A public-works campaign will attack directly the largest pools of stagnant labor."

HENRY S. MCKEE
Industrialist and financier.

"Our efforts to place the conduct of government in the hands of our best qualified men have failed."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"Today, if the government wanted to take over the railroads, we would only have to go to one man—just one man."

REV. CLARENCE W. WHITMORE
Minister of the Gospel.

"The public utilities are the same as the gentlemen pirates in the time of Queen Bess . . . they should hang them on the yard arm of the ship of state."

W. D. STOREY
President of the Santa Fe Railroad, (referring to proposed unification of roads).

"I believe it would be necessary to disfranchise all railroad workers. Otherwise the rail workers would exercise an overwhelming influence on elections."

H. I. PHILLIPS
Newspaper columnist.

"The technocrats hold that we are in the rough today because of overproduction. We have too many factories and too many machines, even when business is good. They would junk the old system and begin all over again under new rules, and with no industrialists, bankers, or politicians in the line-up."

DAVID E. LILIENTHAL
Public Service Commissioner of Wisconsin.

"Where an acute economic emergency exists the customary constitutional principles applicable to the protection of property from confiscation may temporarily be modified, or, if the emergency be sufficiently acute, set aside entirely until the emergency period has passed."

THE HIGH COST OF COMPETITION BETWEEN

Private and Municipal Plants

The wasteful and uneconomic features of the proposed return to a form of utility regulation that has already been tried—and discarded as inequitable both to the ratepayer and to the taxpayer.

By HENRY C. SPURR

In a previous article the suggestion that government plants be set up here and there to serve as yardsticks for measuring the reasonableness of rates of private utilities was considered. It was pointed out that this idea must be distinguished from that of government plants established for the purpose of competing with private utilities in order to force low rates.

There is a difference between the "yardstick" or measuring rod idea and the "birch rod" or competitive idea.

The "birch rod" application of government ownership must in turn be distinguished from outright government ownership as the ideal goal. A firm believer in the socialization of business would, of course, favor setting up government plants to compete with private companies. It would be an approach to his objective.

So those who think that the furnishing of utility service is a function of the government would probably also like to see government utilities established wherever possible. They would probably be confident that these government plants would demonstrate their superiority over private utilities and that this would ultimately lead to driving all the private companies out of business.

On the other hand, there might be some who would hesitate to go as far as that but who, nevertheless, might believe that competition between government and private plants would be a better means of securing low rates than the present practice of government regulation. They might believe that even the rates of the government plants would be lower because of this competition than they would be if the government plants were operated as exclusive government monopolies. No doubt more recruits could be obtained for the government "birch rod" or competitive plant than could be had for out and out government

ownership as the fundamental aim.

The two ideas must not be confused. The "birch rod" theory seems to have gained popularity of late among those who are not satisfied with the results of government regulation through Federal and state commissions.

THE "yardstick" suggestion may be dismissed as of no value except for the purpose of conversation. On the other hand, the "birch rod" idea is worthy of careful consideration as it is a bid for a return to regulation by competition in preference to rate fixing by commissions. There are no legal or constitutional objections to the "birch rod" theory. Is it sound economically?

COMPETITION between private plants was the earliest form of regulation. It did not, however, work satisfactorily. It often led to duplication of facilities in a field not large enough to support more than one company. Parallel railroads were built. Different telephone companies strove for business in the same community. This duplication of facilities was costly. The usual outcome of rate wars was consolidation, followed by recoupment, by means of high rates, of losses due to competition. It was a long time before the evils of competition in the utility field were understood. Even now they are not generally appreciated by the public.

To remedy these evils the states changed their policy of encouraging or permitting competition. They substituted commission regulation for rate cutting. They permitted monopoly, but not an unrestrained monopoly. The states gave their regulatory commissions power to require adequate service at reasonable rates.

Those who are familiar with the history of regulation of utility companies would not want to abandon commission regulation and again trust to competition as a means of securing good service at low rates, at least to competition between private companies.

BUT how about competition between the government and private utilities? Is there any essential difference in principle between that and private companies?

As far as the commissions have spoken on this subject they have not recognized any difference. Where they have had jurisdiction, they have treated applications of government utilities to establish plants in territories occupied by private companies in precisely the same way they would have handled applications of private companies for permission to compete.

The Colorado commission, for example, did not approve plans for a municipal electric plant because, among other reasons, of the resulting competition with an existing private utility company, in the absence of complaint as to the quality of existing service or the fairness of existing rates and the possibility of more reasonable plans being proposed.[1] Thus it will be seen that on the question of authorizing competition the commission treated the municipality the same as it would an outside private company asking to come in.

This case, however, was reversed by the Colorado Supreme Court on

[1] Public Service Co. *v.* Loveland (Colo.) P.U.R.1924E, 516.

the ground that the municipalities of Colorado, under the Colorado laws, do not have to obtain a certificate of convenience and necessity. In other words, the privilege of competing is a favor granted to municipalities in Colorado, a right which is not enjoyed by private companies.

So the Indiana commission declined to recognize the value of government competition. The commission, in the exercise of its statutory duty not to permit the establishment of a second electric utility in a territory adequately served, refused to authorize a city which operated an electric plant for its own street lighting to engage in a general commercial lighting service in the absence of evidence that public convenience and necessity required the additional service.[2]

AUTHORITY was likewise denied a Maryland municipality to build, maintain, and operate for other than municipal purposes an electric plant in a city served by a private electric utility and situated in a territory served by interconnected private utilities. The commission said it would be loath to interpose any obstacle in the way of the fulfilment of the city's will, were not the municipal purpose violative of the very cardinal principle of commission regulation, inconsistent with the aims of statewide utility control, and destructive of the plans for the extension of electric service at cheap rates throughout western Maryland. Were the city a public service corporation the commission declared that it would, under the same circumstances, promptly and positively prohibit the project. This, it said, would not be the arbitrary exercise of a discretionary power but on the contrary the adherence to a settled policy, which, without exception, had been adopted and with demonstrated public benefit, unfailingly followed by each and every of the fifty-one public service commissions in forty-seven states, the District of Columbia, Puerto Rico, Hawaii, and the Philippines.[3]

Later the municipality was allowed to construct an additional plant because of legislative intent shown by a subsequent statute and to permit the new plant, but Chairman West said:

> "While it is true that the commission deplores competition in the utility field, it does not believe it to be its function to destroy competition where it existed prior to the establishment of the commission by exercising its powers to the advantage of one and to the disadvantage of the other of two competitors. It does, however, feel that it would be its duty to prevent the invasion by a new plant, whether private or municipal, of a field already being satisfactorily served by an existing company."[4]

The commission's action was sustained by the Maryland Court of Appeals, which held that the general rule

[2] *Re* Huntington (Ind. 1931) P.U.R.1932A, 61.

[3] *Re* Hagerstown (Md. 1923) P.U.R.1924B, 211.

[4] *Re* Hagerstown (Md. 1926) P.U.R.1927A, 336.

¶ "IF *the private plant is required to pay taxes, the government plant should be put under the same handicap. If the object of the municipal undertaking is merely to secure fair rates by competition, the two plants should also be placed on the same basis of return.*"

that one utility will not be permitted to enter a noncompetitive territory where there is an existing adequate and satisfactory service is not applicable when a municipality proposes to erect a new plant in a city where for a quarter of a century it has been rendering service in competition with a private electric utility.[5]

THE commissions of all the states are undoubtedly as opposed to competition between the government and private companies as a regulator of rates as they are to competition between private companies for the same purpose. Recently in Minnesota a township operating telephone lines was ordered to desist from invading the territory served by a privately owned telephone company and to withdraw service already established in that field.[6]

And in New York it was held that a municipality should not be granted a certificate of public convenience and necessity to enable it to establish a competing utility plant, where the cost of the service would have to be taken care of in prohibitive rates or concealed in an increased burden of taxation. Commissioner Irvine said:

> "In determining to plunge into this adventure without any real consideration of construction costs and without any consideration at all of operating costs, it is evident that the village was swayed by its temper rather than by its judgment. The commission is, therefore, called on to protect the village against itself. Public convenience and necessity do not require a village to embark on a disastrous business enterprise." [7]

In one case the Pennsylvania commission, applying a rule well established in the case of private companies, held that permission should not be granted for construction of a competing municipal plant until the existing company has had notice and an opportunity to comply with its duty. Rilling, commissioner, said:

> "It cannot be gainsaid that in the end of the struggle which is bound to ensue between the proposed municipal plant and the existing one, one or the other will succumb. This will only be attained after the struggle has continued for some time, resulting in not only great economic loss, but in more or less inadequate service in the meantime. Such a policy is in direct violation of the intent and foundation on which the policy of state regulation rests. The theory that the public are best served by two competing companies striving to outdo each other by flying at each other's throats has long been exploded. An exclusive regulated service by a private corporation or a municipal plant economically operated in the interests of the public and responsive to public opinion without destroying existing properties, are the two methods which the best thought and experience has shown should prevail in the rendering of public service in our municipalities." [8]

The same policy of prohibiting wasteful competition between government and private utilities has been upheld by the Utah commission.[9]

WHERE government competition has been allowed it has been on the same ground that private competition would be permitted; that is to say, where the service of the company already in the field was inadequate or unsatisfactory.[10]

Competition was not permitted on the theory that it would be a better regulator of rates than the ordinary practice of rate fixing by commissions.

[5] West *v.* Byron, 153 Md. 464, P.U.R.1927E, 286.

[6] Aure Farmers Co-op. Teleph. Asso. *v.* Alaska Twp. Teleph. System (Minn. 1931) P.U.R.1932A, 58.

[7] *Re* Schenevus (N. Y. 2d Dist.) P.U.R. 1919E, 735.

[8] *Re* Kittanning (Pa.) P.U.R.1919F, 182.

[9] *Re* Bayles (Utah 1925) P.U.R.1926A, 731.

[10] *Re* Lamar (Colo.) P.U.R.1919C, 309; *Re* McCammon (Idaho) P.U.R.1916D, 500; *Re* Keansburg (N. J. 1925) P.U.R.1926A, 160.

The Waste of Duplicated Facilities

"COMPETITION between private plants was the earliest form of regulation. It did not, however, work satisfactorily. It often led to duplication of facilities in a field not large enough to support more than one company. . . . This duplication of facilities was costly. The usual outcome of rate wars was consolidation, followed by recoupment, by means of high rates, of losses due to competition."

A state law authorizing the establishment of municipal plants only on condition that the municipality purchase the existing private plants is, of course, a recognition that competition between the government and private companies is not desirable.[11]

But where the statutes of a state permit a municipality to set up a municipal plant without a certificate of convenience and necessity, there is nothing a commission can do about it.[12]

THE municipalities are free to embark on the competitive experiment if they want to. The birch rod would be available for their use; but the commissions, if their experience has taught them anything, would hardly recommend its value from an economic standpoint.

What is very likely to happen is that the government plant operating under more favorable conditions than its rival will force the private plant to operate on less than reasonable rates. The supreme court of Pennsylvania has said that no community will pay double for any article of necessity or luxury; that if the property holder must, by compulsory taxation, support the municipal system, he will not voluntarily support the private corporation system. In the opinion of the court such a conflict of interest would inevitably bankrupt the system which depends on the voluntary patronage of the public. The court continued:

> "We hesitate to assume, every court is bound to hesitate long before assuming, the legislature intends, by grants to distinct corporations for public purposes, there shall arise such conflict in the exercise of the franchises as will result in the practical destruction of property of any citizen without compensation." [13]

THE disadvantage of government as well as private competition as a means of regulating rates has been well pointed out by Chairman West of the Maryland commission, who said:

> "It should be borne in mind that commission regulation was resorted to only after

[11] White Oak Light, Heat & P. Co. *v.* Benson (Pa. 1915) P.U.R.1916A, 811; *Re* Bath (Pa.) P.U.R.1916E, 692.

[12] Missouri Pub. Utilities Co. *v.* Poplar Bluff (Mo.) P.U.R.1915D, 974; United Railroads *v.* San Francisco, 249 U. S. 517, 63 L. ed. 739, P.U.R.1919D, 282.

[13] White *v.* Meadville (1896) 177 Pa. 643, 35 Atl. 695.

competition in the utility field had been long tried and found utterly wanting and that governmental regulation by a commission with powers of investigation and administrative discretion, but required to follow judicial procedure, was adopted not as a supplement to but in lieu and stead of competition. It was assumed—what commission experience has everywhere demonstrated and proved—that duplication of generating plant and distribution system increases the capital investment upon which rates must yield a return, decreases the area into which service may be extended, reduces the number of consumers who must pay the charges, and hence increases the pro rata share that each user must pay.

"It was also taken as an economic truth that competition maintains rates close to the cost of service furnished by the most poorly equipped and situated competitor.

"Regulation undertakes to preserve for and to return to the consuming public in reduced rates the economies of monopoly in public service, and through the exercise of authority to supervise the operating expenses, to enforce efficient and economical management, to regulate accounting and financing, to investigate and fix rates, charges, practices, and rules, and through general supervision and control exercised by virtue of the delegated police power of the state over those engaged in rendering public service and employing therefor that kind of private property 'clothed with a public interest,' to force rates below the competitive figure to near the cost of production by a single company well and economically managed." [14]

THE fact is that when municipalities establish rival plants they do not want rates to be fixed by the free play of competition. A Texas city, for example, which has a municipal plant began its campaign by promising the people a lower rate than that charged by the private company. When the new plant was established, the lower rate was put into effect. The private company at once lost half of its customers. Then it in turn cut under the city plant rate. This was followed by a city ordinance prescribing minimum rates for the private company and providing for criminal penalties for failure of the company to comply with this city law. The effect of this ordinance would be to divert patronage from the private to the municipal plant. The company appealed to the courts for protection. It was held entitled to an injunction against the enforcement of the ordinance. The court said that each side had engaged in active competition which was not unlawful and that the equities were with the private company.[15]

When municipal plants are once established, municipalities seem to be as keen as the owners of private plants to prevent competition as far as possible.[16]

If competition were desirable, in order to compel lower rates or better service, there is nothing to prevent the commissions from allowing it without spending money for government plants for that purpose. The commissions sometimes do permit competition when existing companies fail and are unwilling to perform their full duty to the public. From an economic standpoint there would seem to be no more reason for the introduction of government competition as a regulator of rates than competition between private companies. If in addition to that objection the government plant is to operate under privileged conditions, as many of them do, the competition is not only uneconomic but unfair.

[14] *Re* Hagerstown (Md. 1923) P.U.R.1924B, 211.

[15] Texas Electric Service Co. *v.* Seymour (1931) 54 F. (2d) 97, P.U.R.1932A, 442.

[16] Mapleton *v.* Iowa Pub. Service Co., 209 Iowa 400, P.U.R.1929B, 359; *Re* Monidah Trust, Water Dept. (Mont.) P.U.R.1919E, 633; Logan City *v.* Utah Power & Light Co. (Utah) P.U.R.1928C, 29; Algoma *v.* Wisconsin Pub. Service Corp. (Wis.) P.U.R.1925E, 204.

If regulation by competition is better than commission regulation of utilities operating under monopolistic conditions, then commission regulation should be abandoned in places where competition is permitted to exist; but if the private utility is still to be subject to regulation, the government plant should be subjected to the same restraint. If the private plant is required to pay taxes, the government plant should be put under the same handicap. If the object of the municipal undertaking is merely to secure fair rates by competition, the two plants should also be placed on the same basis of return.

If, however, the real purpose of having the government enter the business is to drive the private plant out of the territory, why that, of course, is another thing. It may or may not be better for the government to carry on the utility business. There is a decided difference of opinion about that, but this fundamental question must not be confused with that of the desirability of government competition with private plants as a substitute for commission regulation.

The erection of government plants to serve merely as birch rods would be a very costly and wasteful form of regulation. There should not be a duplication of utility service in any field whether that field is occupied by a government plant or a private utility.

Recent Experiments in the Realm of Public Utility Service

THE electric trolley company in Milan, Italy, provides a special service of mourning cars for funeral parties, to and from the cemetery.

* *

AN effort is being made in Wisconsin to include the milk business as a public utility and to place it under the regulatory authority of the public service commission.

* *

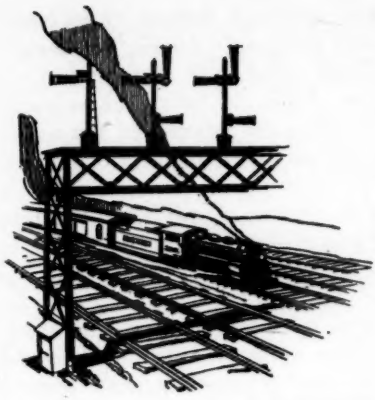
ELECTRIC power for the month of December, 1932, was given free of charge, as a Christmas gift, by the municipal power plant of Potter, Nebraska, to the ratepayers in the towns of Potter and Dix.

* *

FOR two shillings a month, Austrian telephone subscribers may now rent an ingenious device that will answer incoming calls during the absence and inform the caller when the subscriber will return.

* *

AFTER nine years of experience with government-owned butcher shops, fish stores, sawmills, copper, tin, and arsenic mines, cattle ranches, smelting enterprises, and produce agencies, the state of Queensland, Australia, has retired from the field of private business, after terrific losses.



THE DOWNWARD TREND OF

Railroad Rates

Will it rebuild—or ruin—the steam carriers? A regulatory problem that concerns every security owner of a railroad company and of its competitors.

By EDWARD HUNGERFORD

In other days when the average railroad executive faced the question of fixing the passenger fares for the road he controlled, it was both a pleasing and a speculative problem. Pleasing, because, unless he represented a coastwise line and, therefore, had to keep out a weather eye for possible water competition, he knew that in the long run—and in the short one also—people would have to come to his trains anyway. Speculative, because, after all, his rates would always have to be low enough to attract travel; not merely that which was compelled to go afar on business bent, but folk, socially or idly inclined, who were a little loath to venture from the home fireside, unless tempted by low railroad fares. And yet these would have to be high enough so that the passenger revenues of his road would bring what would be a fair proportion of its total earnings. Just what actual percentage this proportion should be, always has been—and always will be—a vexed question in the railroad fraternity. Veterans scratch their heads in dire perplexity when they come to it. Just so with the Pullman charges.

When you and I ventured forth in those simple and pleasant years just before the coming of the devastating World War, we knew that the superior comforts of a parlor car or a sleeping car, or both, were to be ours for the payment of a very moderate extra sum of money to the man behind the ticket window. That seat charge might be as low as 25 cents—for short local runs, such as those, for instance, between Washington and Baltimore or, up in New England, between Hartford and Springfield. For an overnight run, starting after dinner in the evening and terminating about breakfast time the next morning, the standard charge was generally $2 for a lower berth. And, for a good many years, the same figure, for the less convenient upper (to put it mildly) berth. After a while the Pullman Company—in those days the operators of the sleeping cars on most of the American roads—voluntarily took about 25 per cent off the lower berth charge as its compen-

sation for the upper shelf. There was nothing complicated about any of this. No surcharges, no extra tickets, full or fractional, required for the single use of any form of a stateroom—all very simple and understandable even to a novice of a railroad patron. Up in the Northwest, between Chicago and the Twin Cities for instance, a man could get a nice compartment to himself by buying a regular railroad ticket (nothing more) and paying a flat $5 to Mr. Pullman's excellent company. And a good many business men did avail of that privilege. And blessed the railroad for offering them such comfort, at such a fair price.

There were these 5-dollar overnight rooms, sold under the same conditions in other sections of the country —notably between New York and Boston, New York and Washington, San Francisco and Los Angeles— elsewhere. The cars that were made up of them were generally well sold out. Which generally meant ten to eleven fares each, or about the average riding in the so-called Pullman standard sleeping car. The Pullman people were satisfied, the railroad people were satisfied, and—best of all—the American traveler was satisfied.

But that was in those pleasant years before the war. And before commission government and scientific transportation experts began to get into the thing—and mess it all up.

Nowadays if you are a man or woman traveling alone and seek the decent comfort of a small room to yourself in a through train, you pay rather dearly for the privilege. It is not an extreme comfort to demand, or to receive. You can get it anywhere in Great Britain or in continental Europe, by buying a first-class railway ticket and then have your room, which is yours, to yourself. Not cheap over there, but not as expensive as here in the dear old U.S.A.

To gain the same decent form of travel comfort here at home, one must be prepared to pay pretty well. In the much-used trains between Chicago and the Pacific Coast, the regular charge for a compartment—the smallest type of single room available for that two-day-and-three-night journey —is $66.75, or at the rate of $22.25 a night. Of this $66.75 the Pullman Company receives as its straight fare $44.50, the remaining $22.25 goes to the railroad as its surcharge.

Yet this is not all that the traveler faces. For the exclusive use of that same compartment he must be armed also with an extra half-fare ticket, in addition to his regular one; which means that for this not-excessive degree of comfort he must pay—in addition to his regular fare—about one hundred dollars. And not many people do it. The slightly larger drawing-room comes a little higher. And that becomes a luxury for millionaires. And there are no more millionaires. So most of these rooms go bumping across the continent unoccupied.

The railroads, alert to this alarming passenger situation, in these days when they are hemmed in by all manner of competitive services, are seeking adroitly not only to hold but to increase their day-coach traffic, by means of all manner of attractive fare offerings, whilst in coöperation with the Pullman folks, they have tried to

meet this obvious need of a single-room service by the development of what is termed a single-room car, in which there are fourteen small cubicles, each with an excellent permanent bed and individual lavatory facilities. (A slight variation of this car has but thirteen of these cubicles, but an upper berth suspended over the bed.) For the sole use of a room in one of these cars—and most of them are designed for sole use only—it has, until very recently, been the custom to demand one full railroad ticket plus a quarter-ticket. The Pullman charge for each room is equal to double the lower berth rate for the same distance (surcharge included).

These cars first were introduced six or seven years ago. They were put almost exclusively on overnight runs —New York to Boston, to Montreal, to Baltimore and Washington, to Buffalo, to Cleveland, to Detroit, and eventually to Chicago. They were also put into service on the very-popular *Lark* running nightly between San Francisco and Los Angeles, as well as between Chicago and St. Louis, Washington, Cleveland, and Detroit. They came into immediate and very great popularity and modified versions of them (standard sleeping cars, but with three of these single or double rooms substituted for the old and rather unsalable drawing-room) were placed on still other popular over-night runs, and even longer—New York to St. Louis and to Cincinnati, and Chicago to the Twin Cities . . . elsewhere.

THAT was before the Great Depression. That, naturally, knocked the sale of all staterooms pretty badly, just as it did the smart Pullman scheme of selling a man a whole section for single occupancy, at a sharply reduced rate. Recently the extra ticket charge for rooms in all these single-room cars was reduced and the immediate result was a tremendously increased demand for the rooms—despite the Depression—to the point where in some cases it has been difficult to find enough cars to meet the demands. Which proves the precise point of what I have been saying.

CONSIDER, if you will, just how this relationship between Pullman and the railroads has been upbuilded.

In the very beginning most of the railroads built and operated their own sleeping cars (the parlor car was a thing unthought of) and crude affairs they were. Then came George M. Pullman and quickly proved that he had rare genius for the new science of giving folk traveling upon the rail, the maximum degree of comfort. With his skill he could do the thing far better and at less cost than the average railroad could. So gradually they began turning this perplexing branch of their business to Pullman's organization. It recompensed itself

¶ "TODAY *no railroader is inclined to scoff at regulation* PER SE. *What he does writhe under is the obvious limitations that it puts upon him for the flexible adjustment and re-adjustment of his rates.*"

with the revenues taken from the passengers for its extra accommodations, and in certain cases, generally where the run promised little earnings for it, by a direct payment from the railroad as well.

Today, under its standard contract, the Pullman Company must furnish sleeping and parlor cars as required. The railroad assumes ordinary running repairs, including the maintenance of electrical equipment of the cars. Pullman—today practically operating all of these cars in the United States—makes and collects its own charges. But while all first-class railroad tickets are *good* in sleeping and parlor cars, they are not *good* there without the payment of an extra charge of fifty per cent of the Pullman Company's charge, which appears as a part of the Pullman price of admission but from which that company does not receive one penny. This fifty per cent surcharge which goes in its entirety to the railroad or railroads over which the particular Pullman is operating is the thing over which there is always trouble. It is an extra charge, entirely distinct from any extra ticket or fraction of a ticket that may be required for the sole occupancy of any sort of a stateroom. That is another charge—and another irritation.

THE effect of the surcharge *per se,* combined with a general uplift in the basic Pullman rates ten years ago, in the first instance, was to lift the minimium rate for parlor car seats so that it now costs 75 cents for one of them in one of these nice vehicles between Baltimore and Washington and Hartford and Springfield, and other similar short runs. Or three times the former rate. With very few exceptions the minimum rate for lower berth, for the average overnight run, was now $3.75.

The Pullman Company was furious. But it was helpless. It took elaborate pains to print upon its tickets the fact that a third of the total charge went to the coffers of the railroad companies, and not to its own, but very few average travelers took cognizance of that. They simply felt —they still feel—that they were being compelled to pay $3.75 to occupy a shelf, behind green curtains in a dormitory car, for a night, and they grew enraged. And they turned to other competitive forms of transport as quickly as they offered themselves.

Which is one of the many unfortunate burdens that the poor old steam railroad is laboring under, at this very day and hour.

GO into history of this for a moment, and see how government regulation and government interference have played a large part in the building of this situation:

"The higher railroad charge for tickets good in sleeping and parlor cars, represents application to the passenger business of the service cost basis or theory in rate making which has been gradually forced upon the railroads by the state and Federal regulating bodies," says an old passenger traffic man of my acquaintance, a man well-versed in his lore and accurate in all his statements. "The 2-cent per mile laws in the western states were influenced by comparison of the car-mile earnings of day coaches and sleeping cars. Without attempt-

Are Vastly Lowered Passenger Rates the Solution of the Railroads' Problem?

"OUT of the present situation has come the appointment of a committee of traffic executives to undertake a sweeping inquiry into the entire question of passenger fares. . . . Conservative eastern roads in fairly noncompetitive territory are against any reduction in base rates, while roads that are up against a vast web of rail competition (in addition to the other new sorts) are for rather sweeping reductions. The executives of these roads feel that vastly lowered fares are their only way out."

ing a readjustment of rates to remove the discrimination, the base rate was reduced. The railroads made no definite effort in the direction of higher fares for sleeping and parlor-car passengers."

But it was in their mind. It also was in the minds of the esteemed gentlemen who composed the Interstate Commerce Commission in those placid days before the coming of the war. When the Pullman rates were attacked in 1909, those gentlemen discussed the discrimination, quite forcefully, and Chairman Knapp suggested the spreading of the rates. Five years later, the Commission again made this suggestion—in its disposition of the so-called "Five Per Cent. Case."

It was not until the days of the much-discussed government control of the roads that the thing was really brought definitely to the fore. In connection with a general increase of railroad rates, the McAdoo Railroad Administration—with Interstate Commerce Commission approval—established the "additional passage charge" for passengers occupying sleeping and parlor cars. It went into effect on June 10, 1918. The innovation encountered a vast public resistance. McAdoo had not previously overruled the orders in relation to rates and charges which the well-trained railroad men that he had brought about him as subordinates had placed in effect, but in the course of a general inspection trip of the rail properties across the land his shrewd political mind sensed the situation instantly, and in a telegram from a point far distant from Washington, and without further discussion, he canceled

the additional passage charge (surcharge), to take effect at the earliest opportunity—March 15, 1919.

The war was over and the railroads were returning to normal conditions.

BUT the seed had been sown. The rail executives had had a taste of the surcharge and seemingly they liked it. So, apparently, did most of the regulatory commissions. Government control came and went. When the roads were returned to their owners, in March, 1920, the surcharge was not restored and passenger charges were not included in the original application for authority to increase rates to meet increased operating costs, but after the case had been argued and submitted to the Interstate Commerce Commission, railroad wages were further increased and many of the rail executives, as well as their government overlords, began to feel that the freight business should not bear the whole burden of the necessary increase. The application was then amended to include an increase of 20 per cent in basic passenger fares, with the restoration of the surcharge—all of which was thoroughly concurred in and authorized by the Commission.

That was ten years ago. In that day—not as placid or as pleasant as those ten years earlier, but still vastly more pleasant than those that were to follow a decade later—the railroad still was to a large extent king of the inland passenger situation. The automobile had come and was well established in public favor, but the improved highway over which it travels in its best form still was in its infancy here in the United States. The elaborate system of modern busses which now gridirons the land was just being established. And commercial traffic in airplanes simply was not at all. People still rode the trains. But each year they began to ride them—in lessening numbers. The reason was not so difficult to discover. In addition to the growing popularity of these new—competitive—forms of public transport, there still was a public feeling of dislike for the new rail rates—particularly for the surcharge, which was a mistake, both in form and in name.

I AM a railroad shareholder, myself, in six or seven of the outstanding and well-managed rail systems of the United States. In every one of these roads my dividends have ceased to come, completely. I have large personal interest, therefore, in seeing that the railroad gets not only a square deal but a generous one. And I realize that the freight end of railroad revenues can not be overlooked.

Turn to my western railroad friend again. He says:

"To my mind the most important and most interesting thing in this whole business is the drift from the service value to the service cost basis. This was hastened by regulation and would be its inevitable result, but it is not fair to say that this was not a natural tendency and that we would not have been moving slowly in that direction had there been less exercise of the regulatory power."

We had regulation because there had been complaint. There was complaint because of seeming and actual extortions and discriminations. The law was framed and the Interstate

Commerce Commission appointed to stop these complaints, and the Commission came quickly to the belief that they could best be stopped by standardizing all rates and charges, so that, in theory at least, all railroad patrons would be treated exactly alike. And today no railroader is inclined to scoff at regulation *per se*. What he does writhe under is the obvious limitations that it puts upon him for the flexible adjustment and readjustment of his rates.

THE efforts of groups of men—not railroaders—to impose theories upon railroad salesmanship, even though those very theories have been supported by certain railroad executives, have done much to bring the roads to their present plight, in a time of great depression and against new forms of aggressive competition. The railroaders realize this.

The passenger executives of the leading roads are now meeting in conference to alter the basic passenger fares. Perhaps to radically reduce them. They have seen of late repeated instances where radical reductions in these fares—generally in the form of some sort of excursion—have brought increased traffic back to the trains. These results have not been lost upon them.

Neither have they been lost upon the Interstate Commerce Commission. Two or three months ago that august body sent an informal letter to the presidents of the larger roads, asking them to give thought to the problem of the swiftly diminishing passenger revenues. The commission again was alarmed because the passenger earning end of the railroads was not doing its proper part toward meeting the operating costs. The alarm of the railroaders was due rather to the fact that the revenues were not doing their part toward anything.

OUT of all this has come the appointment of a committee of traffic executives to undertake a sweeping inquiry into the entire question of passenger fares. At the outset, the basic rates are being studied. There is a vast diversity of opinion as to what these should be. Conservative eastern roads in fairly noncompetitive territory—such as the New Haven or the New York Central, for instance—are against any reduction in these base rates, while roads that are up against a vast web of rail competition (in addition to the other new sorts) are for rather sweeping reductions. The executives of these roads feel that vastly lowered fares are their only way out.

CERTAIN executives are coming to see the folly of the ill-named surcharge, as well as the extra ticket requirement for individual use of staterooms. Something less irritating and still equitable must be substituted.

It might be well for the roads to make extensive study of the systems of passenger and sleeping-car charges that exist upon the well-run railways of Europe. The scheme of basic charges over there seems to stand the brunt of the years pretty well. And over there, there is nothing like the governmental regulation of rail traffic that we have here.

What Others Think

Federal Power Regulation Passes Its First Test in Constitutional Law

REPORTED elsewhere in this magazine is the recent ruling of Federal Judge Luther B. Way handed down on March 30th in the celebrated New River Case, involving the power of the Federal Power Commission to license and control hydro-power projects situated on non-navigable streams.

Aside from the purely legal aspects of this decision, its effect is likely to be of far-reaching importance, not only for the electrical industry but for utility regulation generally.

FOR the purpose of recalling the background of this *causa celebre* before considering the reactions to Judge Way's opinion, it will be remembered that the New River Case involved three main points:

(1) Is the New river a navigable or non-navigable stream?

(2) Does the Federal Power Commission under the Federal Water Power Act have power over plants situated on non-navigable streams?

(3) Is the Federal Water Power Act constitutional in any event?

THE first of these propositions involves a question of fact of little more than local importance, especially since the court answered the second question in the affirmative to the extent of giving the commission power over all non-navigable streams which "would ultimately affect the flow of water in a navigable stream." This, together with Judge Way's constitutional benediction of the Federal Water Power Act on the third point, are the chief developments of interest to the electrical utilities and to their regulators.

George Otis Smith, chairman of the commission, described Judge Way's decision as "a major victory in the public interest." He stated to the press:

> "The members of the Federal Power Commission expressed themselves as gratified with the result of the New River Case as reported in press dispatches today.
>
> "The commission is upheld in its action in taking jurisdiction by offering a major license to the Appalachian Power Company for its proposed power plant on the New river.
>
> "The repulse of this attack on the public's right of power utility regulation as expressed in the Federal water power act is a victory in the public interest."

A portent of the national significance of the decision in connection with President Roosevelt's ambitions for Federal power regulation can be seen in the statement by Oswald Ryan, counsel for the commission to the Associated Press:

> "This decision should give great encouragement to President Roosevelt's program for Federal regulation of the electric power. It definitely establishes the constitutional power of Congress to deal adequately with the subject. Had the decision been against the government the President's program might have been seriously impeded."

The Scripps-Howard Press likewise welcomed the decision as a great victory for the people. An editorial in the *Daily News* (Washington, D. C.) stated:

> "The Federal Water Power Act is constitutional, a Federal district court in Virginia has just found in the New River Case. The Federal courts now see in the commerce clause of the Constitution, powers sufficiently broad to permit recapture, determination of investment, amortization from excess profits, supervision of securities, and other broad regulatory requirements in the public interest.
>
> "To the electric ratepayer this is a de-

cision of tremendous importance. It removes a serious obstacle in the way of fair, courageous, Federal control over the important water-power projects of the country. Such control can mean millions of dollars saved in electric light bills and in taxes where recapture is contemplated. To the purchaser of securities it affords new protection."

IT will be remembered that former Attorney General Mitchell of the Hoover administration at one time advised the Federal Power Commission that some of its purported statutory powers were constitutionally questionable. Despite Judge Way's recent decision, a number of fairly well-informed constitutional lawyers still think so.

Judge Way justified the constitutionality of the Federal Water Power Act by concluding that Congress, to protect the "public interest," must have and exercise control and supervision of streams whose flow affects navigable streams. His opinion is not just clear as to how this constitutional power of Congress to protect the "public interest" in the navigable streams and their non-navigable tributaries is related to the regulation by a Federal commission of the rates for electricity generated by the water from such streams, or of the service and securities issues of corporations generating it.

Assuming, however, the soundness of Judge Way's constitutional conclusions, it is difficult to see just where the distinction between non-navigable streams affecting the flow of navigable streams and those not having such an effect is likely to prove much of a practical test at all. All streams, navigable or otherwise, take their heads on the slopes of some watershed or other across the face of America and, therefore, inevitably terminate either directly into a navigable stream or, if you will, into a tributary of a tributary of a tributary of a stream. It all amounts to the same thing—the "flow" is ultimately affected.

VIEWED in this light Judge Way's decision holds the possibility of handing over the power of utility regulation to the Federal commission of every plant in the country developing hydro power which, from various computations, is well over a fourth and much nearer a third of all the electrical horsepower generated. The concentration in Washington of this regulatory power over the most important utility industry may be wise and it may be constitutional, but this much is certain: when state commissions find that they must surrender authority over a fourth of the number of plants of their most important charge—electrical energy—it will have an inescapable effect of hastening the movement from Main Street to Washington of other types of utility regulation in the path of the railroads. Judge Way's decision will be reviewed in the Supreme Court, unless all signs fail, and state commissions will be well advised to see that some consideration of states' rights in regulation is not overlooked by the highest court.

—F. X. W.

APPALACHIAN POWER CO. *v.* FEDERAL POWER COMMISSION. Opinion of Federal District Judge Luther B. Way. March 30, 1933.

POWER BOARD WINS IN VIRGINIA RULING. News item. New York *Times*. March 31, 1933.

NEW RIVER DECISION. Editorial. Washington *Daily News*. March 31, 1933.

The Governor of New York Moves for Holding Company Regulation

THAT Governor Lehman's administration in New York, which some Manhattanites have waggishly referred to as the "Albany branch office of the New Deal," will keep step with industrial reforms initiated by the home office at Washington, was indicated very clearly by the governor's message on March

22nd to the Empire State legislature, in which he advocated the enactment of a series of amendments to the Public Service Commission Laws calculated to afford better protection against abuses disclosed during the past two years in holding company practice "outside of the state."

The governor's recommendations were aimed principally at "upstream loans"—that is, financial transactions whereby parent companies benefit at the expense of the credit of their operating subsidiary children. The governor also indicated that he is gunning for the diversion of subsidiary utility funds from operating companies to affiliated corporations without the approval of the public service commission. He wants clear statutory jurisdiction that would enable the commission to pass upon the reasonableness of all fees paid by operating utilities for management or other "services" rendered by parent or affiliated corporations.

The electric industry which has been lately inaugurating a private internal version of the New Deal, failed to bristle as of old. On the contrary, supporters of the governor's measures were cheered by a telegram from Floyd L. Carlisle, chairman of the boards of the Niagara Hudson Power Corporation and of the Consolidated Gas Company, and recognized leader of the rejuvenated electrical industry. Mr. Carlisle endorsed the governor's eight-point program and expressed hope for an "early passage" of the proposed bills. The Carlisle telegram was as follows:

> "I have read your special message of yesterday to the legislature suggesting certain specific changes in the laws relating particularly to public utility holding company practices. I believe these proposals are in the interest of both the consumers and the companies and I hope that appropriate legislation carrying out your recommendations may be passed."

NOTWITHSTANDING this evidence of the desire upon the part of the electrical industry itself to inaugurate regulatory reforms, certain financial interests expressed impatience with the proposed remedies. *The Wall Street Journal* pointed out that the governor's chief complaint seemed to be against alleged excessive service charges, but that not one of his eight specific recommendations had any material bearing upon service charges or the regulation of service charges. It observed that the nearest approach was the provision that would enable the commission "to strike out of operating expenses of a (operating) company all unjustifiable charges imposed by a holding company"—a power already unquestionably possessed by the commission.

The same journal also questions the wisdom of the governor's proposal to decrease the percentage of stock (of an operating company) which may be held by a holding company without public approval. It asks whether a reduction from the present 10 per cent to a possible 5 per cent could possibly eliminate anything of importance. It concludes that if the commission does not already have sufficient power to correct service charge abuses, nothing in the governor's provisions would give it such powers, whereas, if the commission *does* already have sufficient powers—the message is superfluous.

A news item in the same paper informs us that as a group the utilities operating in New York state are generally regarded as being largely free from the activities of which the governor complains, and that his recommendations are in the nature of an ounce of prevention rather than a pound of cure. Nevertheless, one company, involved in the commission's current study of holding company subsidiary transactions, has taken the attitude that the proper time for determining the reasonableness of an operating expense is in a rate case and it has taken the commission into court on that point, where the matter still pends.

BE all that as it may, Wall Street investors apparently felt that the governor's message could not make for bigger or better utility dividends, notwithstanding the presumably good record

for good behavior of New York utilities, or the apparent complacency of Mr. Carlisle. Following the message, utility shares turned very heavy on all exchanges. A factual comment from *The Financial World* of March 29th follows:

> "The utility section of the stock list is still giving the least favorable performance of all, and declines last week were helped along by Governor Lehman's request to the New York legislature for further restrictions on holding company practices. A number of points in his message covered practices which, although engaged in by few, have redounded to the disadvantage of the entire industry and should be speedily curbed. Utility stocks have not been aided marketwise by the weekly reports on electric power production which forecast further declines in gross and net and may bring about additional dividend adjustments. . . . What is needed most by this industry, as well as all others, is a revival in general business, and in the meantime it is in a period of seasonally declining demand."

Add to this the conclusion of another financial publication, bearing the same date, *The Business Week:*

> "The pessimistic news on the stock market includes Governor Lehman's recent message to the legislature attacking utility abuses and recommending the correction of the relations between utilities and holding companies. In other circles, the governor's message was looked upon as constructive in that it will act as a corrective on securities that have been milking the utilities and could not stand on their own legs."

It all probably comes under the head of good old-fashioned spring cleaning now so popular at Washington, as well as Albany. The banks have taken their medicine and are apparently much better for the dose. Railroads and insurance companies are in line and while the "scaling-down" process is hard on the stockholder, he must remember that it is for the ultimate soundness of his investment. Furthermore, it is difficult to see how a little more application of soap and water behind the ears is really going to hurt the kids who are already clean.

—F. X. W.

UTILITY HEAD BACKS LEHMAN MEASURES. News item. New York *Times.* March 23, 1933.

EDITORIAL. *The Financial World.* March 29, 1933.

STOCKS. Editorial. *The Business Week.* March 29, 1933.

More Governmental Regulation as an Aftermath of the Economic Crisis

IF anyone has a specific plan for regulating the New York Stock Exchange—or, for that matter, all stock exchanges—now is the time to step forward and present it. All Washington talks these days of the necessity for such Federal regulation, but specific and definite recommendations so far have been very meagre. Long ago Progressive Senators talked about "putting the brakes on Wall Street"; recent unsavory revelations of the Senate banking investigation has given such sentiment an added impetus.

Now, Louis Seibold, featured journalist for Universal Service tells us that President Roosevelt's determination to put an end to the Wall Street practice of "speculating with other peoples money" is expected to take concrete form shortly. He hints that the Rooseveltian brain trust is already at work cooking up various measures designed to lasso the speculators. Mr. Seibold mentions five points that will be given consideration:

> "In the order of importance these are: (1) Legislation compelling the New York Stock Exchange to incorporate so as to bring it under government control; (2) Rigid restrictions of 'brokers' loans' which four years ago amounted to six billions of dollars; (3) Regulations to compel in-

vestment brokers and exchange members to make daily reports of their borrowings from banks; (4) Regulations establishing a high margin of 'securities' accepted by banks as collateral for loans; (5) Application of the new laws and rules to be formulated by the Comptroller of the Currency so as to apply to commodity as well as security exchanges."

The subject should not be new to our President. As a member of the New York senate twenty years ago, he advocated compulsory incorporation for the New York Stock Exchange. The financial hobby beat him then and has defeated similar measures since, but now Franklin Delano Roosevelt may have the last laugh. Definite proposals so far are lacking, however.

In a press interview on St. Patrick's day, William A. Gray, former counsel to the Senate Banking and Currency Committee, in its stock exchange investigation, reiterated the need for Federal regulation of the stock exchanges. He declared that the government has authority to undertake such regulation, based upon its constitutional powers over interstate commerce, the mails, and banking. He added:

"There can be no question that a number of practices which have been shown to exist are evil in their results, whether or not they are evil in themselves.

"Some difference of opinion might exist whether legislative action should be instituted to curb these practices and correct some of these evils. The matter is worthy of the most careful study."

But Mr. Gray refrained from offering specific recommendations, pointing out that the investigation is still under way.

BUT the stock exchanges are not the only nonutility concerns that may come in for governmental regulation as the result of the economic crisis. Dr. Frederick B. Robinson, president of the College of the City of New York, believes that the current depression is due in large measure to the disastrous competition existing in some of our major industries. He stated in an interview to Earl Reeves of the New York *American:*

"In my opinion the time has arrived when great key industries not hitherto classified as public utilities should be declared to be affected with public interest. I mean industrial corporations operating nationally on a scale so large as to make their dislocation a general disaster. By their unrestrained competition in periods of rising prices, by their expansion of plant and extension of credit and speculation they have helped bring about panic, depression, and unemployment. Because of their unregulated activities personal freedom of opportunity to the individual has been curtailed."

SOMEWHAT along the line suggested by Dr. Robinson is the emergency farm relief bill presented to the special session of Congress by President Roosevelt, avowedly as an "experiment." Among other features of the proposed measure is the provision for taxing the "processors" or handlers of agricultural products by the Secretary of Agriculture, who may use such revenue for the leasing of surplus farm acreage to be retired from production. The bill further gives the secretary power to require such processors to obtain licenses as a prerequisite to doing business and to maintain a uniform system of accounts and to report regularly concerning their operations in a form and manner designated by the Secretary of Agriculture.

The bill is not clear as to whether these licenses are to be granted upon the basis of revenue raising only, or upon a "public convenience and necessity" basis. If the latter is the case, the processors are, indeed, upon the brink of a public utility status, or at least something very much resembling a public utility status.

The word "processor" as defined by the act would include all manufacturers, preparers, or handlers of the designated agricultural products after the farmer has sold to his primary market. This would probably mean the millers in the case of grain, the packers in the case of stock, such as hogs, the dairymen in the case of dairy products, and the ginners in the case of cotton.

If it is true that regulation of the packing industry, for instance, is thus

contemplated by the new farm act, one wonders how the law can get around Wolff Packing Co. *v.* Court of Industrial Relations, 262 U. S. 522, P.U.R. 1923D, 746, in which the Supreme Court vetoed a Kansas law which sought to impose utility regulation upon the packing industry in 1923. Of course, stockyards have been under some sort of regulation by the Secretary of Agriculture since the Federal Stockyard Act of 1920, but a stockyard, after all, is in the nature of a special kind of warehouse and warehouses have been regulated as a utility in this country since Munn *v.* Illinois in 1877, and much before that in England. The actual business of packing and preparing meats, however, is obviously distinguishable from stockyards and the suggested *impasse* between the Wolff Case and the proposed act is still a puzzle at this date. Perhaps the Supreme Court will reverse itself as it has done before. Perhaps it will simply declare that conditions have changed since the Wolff Case and that in the modern economic situation the processing of agricultural products is affected with public interest. Last, but not least, perhaps, as Al Smith suggested, the court will just wrap up the Constitution and put it away on a shelf until the war against depression is over and won.

—F. X. W.

WALL STREET TO BE CURBED BY ROOSEVELT. By Louis Seibold. Washington *Herald*. March 13, 1933.

REGULATION OF ALL KEY INDUSTRIES. By Dr. Frederick B. Robinson. New York *American*. November 20, 1932.

CONTROL URGED FOR MARKET. News item. Washington *Times*. March 17, 1933.

How the Utilities Behaved during the Bank Holiday

THERE is nothing like a national emergency to bring all real Americans together. During the recent banking holiday even the wicked "Power Trust" turned out to be a patriotic citizen, if coöperation in easing the strain of suspended financing can entitle one to such a reputation. Utilities far and wide, gas, electric, and telephone, voluntarily announced that there would be no discontinuance of service for nonpayment of bills, nor penalties for failure to make prompt payment of bills during the holiday.

The *Business Week* commented upon the conduct of the utilities as follows:

> "Most amazing was the extension of credit to services where cash had been the rule. Railroads accepted checks 'wherever possible.' So did air lines. (Sky-carriers emphasized their C.O.D. facilities, allowing persons stranded far from home to be delivered on payment of passage by friends or relatives.) Such measures were insufficient to scotch the inevitable decline in passenger traffic. It caused cancellation of twelve New Haven railroad trains, including the crack *Yankee Clipper* and *Merchants' Limited* between Boston and New York. There were similar temporary suspensions by other roads, and by bus lines. Some carriers sustained schedules, but cut down the number of cars per train. Steamer lines and cruise services out of New York advertised acceptance of checks. (Papers reported the breakdown of one liner in New York harbor. (Her name was *American Banker*.)
>
> "The Interstate Commerce Commission eased what threatened to be a serious condition in freight movement by ruling that the 'bank holiday' should be considered as any other legal holiday and 'counted out' in collecting for shipments. (Regulations permit carriers to extend forty-eight hours' credit, in special cases ninety-six.) Demurrage and storage charges were suspended for duration of the holiday.
>
> "Utility companies helped steady the public mind by continuing all services, not pressing consumers for payment, accepting checks as tendered subject to the collection clause."

EVEN the holding companies came in for patriotic service in the way of furnishing payroll cash to operating

subsidiaries that could not otherwise meet them. Few operating companies were forced to call upon parent companies to ship funds for payrolls but when such requests were made transfers were made through banks, telegraph, or mail. The *Electrical World* stated:

"The Commonwealth & Southern Corporation has already sent a small amount of cash to a few of its subsidiaries already affected and stands ready to come to the assistance of all of its subsidiary companies should there be any need. The same is true of the American Water Works & Electric Company, which reported cash of $3,616,993 at the close of the year.

"The American Gas & Electric Company has several properties in Ohio and Indiana and while no funds in large amounts have been sent to the interior, the company has sufficient funds to meet any demands.

"It was stated at the offices of Electric Bond & Share Company that it has sufficient cash on hand to supply the needs of its subsidiaries in case of a shortage of funds due to the temporary closing of banks.

"Detroit Edison Company has been able to get sufficient cash to meet payrolls and to cash employees' checks through New York connections.

"Cities Service Company and the Associated Gas & Electric Company reported that there has been no call for cash from the subsidiary companies, although they stood ready to meet the demands."

Two instances were reported where utilities were required by commission order to extend credit to consumers during the holiday. Such orders were handed down in the District of Columbia and Alabama. It was understood, however, that the orders were formal and not necessitated by the refusal of utilities to coöperate.

—M. M.

BUSINESS ON A HOLIDAY. *The Business Week*. March 15, 1933.

UTILITIES MEET BANK EMERGENCY. Editorial. *Electrical World*. March 11, 1933.

The New Deal in the Public Relations and Publicity Efforts of the Power Industry

A NEW national identity has been planned for the power utility industry. The old National Electric Light Association has gone and the new Edison Electric Institute has risen instead.

The circumstance, like all benign natural phenomena, geological, political, or divine, moves me to grateful prayer and joyous contemplation, for one thing about it keeps sticking out ahead of everything else—the code of the new institute makes only the most casual mention of any plans or aims for national publicity.

I note that § 2 of this code provides that:

"All statements and data furnished to consumers and stock exchanges; *all information designed for public dissemination*, and all reports to government authorities, shall be accurate and clearly indicate their source."

Surely this is what is meant when a speaker or writer is said to have mentioned something "in passing." The above italicized line is not in italics in the code. The italics are mine. They simply emphasize the casualness of the original.

There is nothing casual about the other sections of the code. They specify details for audit, certification, and publication of financial statements; require reasonableness and fairness in charges for management and other services to operating companies; call for the answering of questionnaires on business practices; for the discipline of member companies.

From start to finish this new organization turns in upon itself and examines its own soul. It starts out by not being concerned with its reputation chiefly. It starts out with real concern for its character.

There is no breast-beating here, no public proclamation of purity, no intimation of plans for public defense.

There is the bare announcement that a new Fraternity of Industry is to be created, admitting only members of proven character and integrity, labeling them so that they cannot be mistaken. The news deserves only the most enthusiastic cheers.

HOWEVER, in launching this new fraternity the sponsors went a little further concerning national publicity than the casual phrase contained in the above-quoted passage from the code. They uttered two statements which, this writer believes, furnish the background of a theme for the utility industry which can be pondered with profit and enlightenment.

One is the utterance of a demand "that the industry divest itself of all semblance of propaganda activities."

The other was a statement of objectives which included, "the ascertainment and making available to the members and the public, of factual information, data, and statistics relating to the electric industry."

Here are two pillars of the new temple. Between them the spectre of a new problem appears. Let us try to find out what it is.

WE are a people of pendulums. We swing far over in one direction, then we swing swiftly to the limit of the opposite direction. We go in for liquor in a big way, then suddenly we adopt Prohibition; then we drink liquor harder than ever. One of our most difficult problems until recently was to settle down midway upon beer and wine and stop there. In the public utility business we sought peace and quiet in public relations, and we sought it with a brass band.

How do we propose to seek it now?

First, it appears, by "divesting" the industry "of all semblance of propaganda activities."

Of the wisdom of this proposal no man can have any doubt. To decide not to try to rebuild the propaganda engine that went to smash a few years ago, required no superhuman wisdom. It was the best engine of its kind ever set in motion, and if it could not accomplish the job, then no model or copy could do it.

The original could not have been improved upon. It covered all but nine "backward" states. Its work was regarded (by its leaders) as scarcely less necessary than the work of the state health departments. Its reports, clipsheets, and pamphlets were as regular as weather forecasts and, presumably, as indispensable. Its *pronunciamentos* found their way into newspapers all over the country and thence into the heads of most English-reading Americans. It saw—if the allegations of its critics are to be believed—that the right things were taught about public utilities in schools and colleges. It went to the very roots of learning, influencing the trend of pedagogy and economics by undertaking the education of teachers and college professors. It scrutinized proposed and current textbooks. It laid on heavily with red-blooded, hard-hitting oratory. Its speakers were said to have addressed (I have come across the 1924 estimates) 6,000 audiences aggregating nearly 1,000,000 persons; and this did not include other millions reached by radio. By 1928, the audiences were estimated at 2,000,000, exclusive of radio.

What happened to this, the most perfect high-powered publicity and public education machine ever devised by business men, is now history. It is gone. The industry is formally "divested" of it.

Do we swing pendulum-like to the opposite extreme? Apparently not, for the second proposal of the new code requires "the ascertainment and making available to the members and the public of factual information." This seems to involve some attention to national publicity; some midway point between the noise of a brass band and the silence of a tomb.

BUT the trouble here is that while the industry may thus be actually divested of propaganda activities, it

will not actually be divested of the "semblance" of them. This cannot be done. It is one thing to avoid propaganda activity. It is another thing to avoid accusations of propaganda activity. To some people the presentation by a utility of any information whatever is propaganda; such people hailed the very formation of the new institute itself as propaganda of the subtlest kind.

Can the skepticism of such people be avoided? Is there any such thing as "perfect public relations," which includes the admiration and approval of those trained and organized for the periodical utterance of the Bronx cheer? If highly organized propaganda engines won't accomplish the ideal, can it be accomplished by the silence of the tomb? Obviously not.

It seems to me the question at this point is, "What are we after?" What do we seek in this ceaseless hunt for peaceful public relations, this setting up of a phrase descriptive of a kind of white-robed Paradise where everybody sits on pink clouds playing lyres and pearl-inlaid oboes, nodding pleasantly to one and all? It makes you think of the question of the Weber-and-Fields' waiter, when the shoe-drummer in the restaurant called to him:

"Take this steak back to the kitchen! It isn't tender enough!" and the waiter replied, "Not tender enough! Do you vant it should jump up and kiss you?"

The public utility business has already made up its mind on one point, namely, that no national propaganda engine will give it peaceful public relations. It seems to this unworthy student that there are four more things in this connection upon which it can profitably make up its mind:

(1) That no other publicity policy, either of moderation or of complete silence will stop the skeptics, chronic and professional.

(2) That the chronic and professional skeptics had better be ignored entirely.

(3) That the best public relations policy is the unmistakable label of complete and simple honesty.

(4) That even then the public will not "jump and kiss you," and you had better not lose either sleep, temper, or peace of mind expecting it to.

THE most important of these four simple precepts is the third, because it fixes the basis of any public relations policy, makes it inherent in the practice of the business, puts the emphasis on character where it belongs, instead of on reputation.

That this precept is amply provided for in the new national set-up seems thoroughly established. The "label" has been thought of and carefully designed. All the good public relations that any utility can hope for can be actually achieved by deserving the label and making it stick; and by not trying to stick it where it doesn't belong. For the label of thorough honesty in national public utility practice—rates that are honest because they do not spring from overcapitalization, unsound mergers, holding company suspicions; and the power to discipline and excommunicate the wicked—is more than half the public relations battle. The rest of the battle calls for no more than normal powers of reasonably pleasant articulation. Such powers should be developed, of course. There is no use being labeled "honest but dumb."

The next most important of the foregoing precepts (at least to this chronicler) is the second—that the habitual and professional skeptics had better be ignored entirely. They are going to scream no matter what you do. They are not even going to believe the label; they will contend that the label is phony. No arguments will sway them, no proof will convince them. They will hail it all as a recurrence of your propaganda, or at least that "semblance of propaganda," to which you have pledged eternal divorce.

It is well to keep all this particularly in mind, because what they thus create is not really bad public relations, but only the semblance of bad public relations.

Just as you cannot avoid, if you are articulate at all, a "semblance of propaganda," so you cannot avoid, unless the habitual Bronx cheer-leaders are all suddenly stricken speechless, a "semblance of bad public relations."

It is, therefore, a waste of time, and it is only courting trouble to try to avoid them by any national publicity set-up which foists upon the public a picture reeking with purity, honesty, big-heartedness, and good-will-to-all; and it is pleasant to see the utility business deliberately trying to "divest itself of all semblance of propaganda activities," even though the effort is a futile one so far as these political mountebanks are concerned.

I SAID as much in this forum some weeks ago, appealing for more attention to our local and neighborhood knitting, and less to tilting at national windmills; and from Portland, Oregon, came a reply by Mr. Roderick Lull, one of the associate editors of the *Industrial News Review*, who made what he considered a telling point. Mr. Lull, insisting that "national campaigns come first" in utility publicity, declared that "power would have become a national political issue," even if there had never been a national campaign, and a Federal Power Commission investigation. He wrote:

> "As a matter of fact the electrical scientists made power-in-politics inevitable. When they found out how to make possible the coverage of a whole state and a thousand towns by a single company, which of necessity had a monopoly on the business, they set the stage for trouble. The only way to avoid trouble would have been to keep the small local utility, making and selling its power in a single restricted market—precisely as the best way to have avoided the present toll of automobile deaths would have been to never make a car capable of doing more than fifteen miles an hour."

This looks plausible until it is carefully examined. What Mr. Lull thinks he is doing is comparing the modern far-flung utility company to the modern high-powered automobile, but what he is really doing is comparing it to the reckless driver. What Mr. Lull has forgotten is that it is not the new, modern, fast car that kills people, but the incompetent person at the wheel.

Mr. Lull can secure any amount of evidence from a large number of state automobile commissioners who assert with great seriousness and authority that recklessness, not speed, makes motoring fatal; that it is not the improvement and complexity of the machine that does the damage, but the bad management of it.

Likewise I am constrained to believe that it is neither the size nor the coverage attained by a utility company that makes it vulnerable to attack by demagogues. It is "reckless driving" in the utility business; it is bad management, and no national campaign of any kind is a sound substitute for good management or careful driving.

But even good management and careful driving cannot stop the mouths of King Razzberry and his merry courtiers; and so it is also useless to hope to stop them by national campaigns.

And it is not worth while to try because the trouble they stir up is not real. To pay these gentry any attention at all is to try to avoid the semblance (not the fact) of bad public relations. Trying to avoid this is to play into their hands, for it cannot be avoided so long as they keep up their racket. Striving for such a futility leads to madness, and madness in a public servant is the immediate precursor of destruction.

Far better off is the man, the woman, or the public utility which is not concerned for its reputation chiefly, but is sincerely concerned for its character.

That this is the birthmark of the new Edison Institute is one of the most encouraging of the recent signs and portents in American business.

—RAYMOND S. TOMPKINS

EDISON ELECTRIC INSTITUTE CONSTITUTION. New York. 1933.

THE NATIONAL CAMPAIGNS COME FIRST. By Roderick Lull. *Industrial News Review*. February-March, 1933.

The March of Events

Louisiana Commission Objects to Reforestation Relief

THE Louisiana Public Service Commission is opposed to the Roosevelt reforestation program, designed to give work to 250,000 men, if it means taking any funds from flood control projects, according to a news item in the Washington *Daily News* of March 18th. In a telegram to Senator Long (D.), of Louisiana, members of the commission said they had been reliably informed that a reduction of $4,000,000 in flood control appropriations would result from passage of the reforestation program. The commission stated in its telegram:

"Past experience and present conditions justify uninterrupted progress of flood control and flood control work is just as good a vehicle for unemployment relief as reforestation."

Roosevelt Emergency Rail Bill Completed

FINAL drafting of the President's emergency railroad bill providing for a Federal coördinator in regulating the various forms of interstate common carrier activities was completed during the week of April 3rd, on which date a decision was reached by the President's railroad advisory group which had completed its consultations and discussions with the respective parties interested in the proposed legislation.

Virtual closing of debate on the matter among interested parties left the drafting of the President's bill up to a committee consisting of Secretary of Commerce Roper, Joseph B. Eastman, of the Interstate Commerce Commission, Professor W. M. W. Splawn, special investigator of the House Interstate Commerce Committee, Professor A. A. Berle, economic adviser to the President, and Raymond Moley, Assistant Secretary of State. The joint session on April 3rd was attended by the President's advisers, railroad executives, security owners, shippers, railroad labor, the Interstate Commerce Commission, and various congressional authorities.

One of the chief accomplishments anticipated under the projected procedure will be the elimination of heavy expenses now incurred by the railroads as an incentive for new business under the spur of competition. Such economies will not involve the reduction of personnel, but rather discontinuance of wasteful practices through performance of accessory services by the railroads without cost to the shippers.

It was the understanding of those attending that President Roosevelt would not seek the passage in Congress of any "omnibus" bill but would make a gradual approach by definite stages in attacking the whole problem. Other steps in the administration's program will be undertaken later. They include truck and bus regulation, Federal control of holding companies, repeal of the recapture clause, and eventual consolidation of various railroads.

Public Ownership of Banks Proposed

PUBLIC ownership of banks or a "shaking up" of banking methods was suggested by speakers at a luncheon of the League of Industrial Democracy in New York on March 18th. Dr. Max Winkler, head of the American Committee for the Protection of Foreign Bondholders and economic adviser to the Senate subcommittee investigating banking, said that although the nation still believes in the ability of the government to cope fully with the banking situation, a complete overhauling of the system is essential. He criticized the sale of bonds of several South American countries, floated by American bankers.

Harry W. Laidler, director of the league, suggested that the government take over a large share of banking by consolidating the Federal Reserve System with the Postal Savings banks. He said that public ownership would reduce the cost of doing banking business, and that the country would no longer have to pay bank presidents salaries and bonuses of $1,200,000 a year, recently paid to a New York bank president now under indictment for income tax evasion.

Alabama

Municipal Plant Bills Considered by Legislature

THE so-called "Carmichael bills," which would authorize Alabama cities to establish their own electric power systems to take advantage of the Roosevelt "new deal" at Muscle Shoals, went on the calendar of the house of representatives after being reported out favorably by a 12 to 5 vote of the civil laws committee on March 14th.

Representative George Sossaman, of Mobile, chairman of the committee, called the group together after several members, who were absent during a prior tie vote of 7-7 which had kept the bills from the floor the previous week had requested a second vote. The committee, after considerable discussion, voted to send the "Pitts bill," which prohibited utility corporations from charging a 10 per cent penalty for delinquent payment of bills and from assessing service charges, to a subcommittee for the purpose of further negotiations with the state public service commission.

The committee also voted out favorably a proposed constitutional amendment which would permit municipalities by popular vote to exceed their limit of bonded indebtedness to obtain funds for construction of municipal projects.

California

Lower Utility Official Salaries Urged by Commissioner

LOWER salaries for highly paid executives of big utility companies as a means of bringing about rate reductions were recommended on March 17th to a committee of the state senate investigating utility rates. The suggestion was made by Clyde L. Seavey, president of the state railroad commission, at a meeting of the senatorial committee at the state building. President Seavey had previously favored the enactment of legislation which would raise taxes of utilities as a substitute for wholesale rate reduction orders by the commission. It was President Seavey's contention that by increasing taxes the state would derive more revenue from the utilities with less likelihood of increased rates, while on the other hand rate reduction orders of the commission would probably result in expensive and costly litigation from which the ratepayers might obtain no benefit and from which the taxpayers would certainly obtain no benefit.

President Seavey pointed out that it was easier for the commission to prevent utility companies from increasing their rates than to require them to reduce rates. He also suggested that the utility officials might cut their own salaries in an effort to meet the suggested increase in taxes. To show their own good faith in the matter, President Seavey stated that the employees of the commission had agreed to the necessity of an emergency salary reduction for themselves as a means of state economy. He stated that if a reduction of 10 per cent of the higher bracket of salaries charged to operating expenses were made in the combined utilities it would affect the rate of return to the extent of .02 per cent; and that if a 100 per cent reduction in such salaries were made it would affect the rate of return to the extent of .16 per cent. Conceding the minor effect on the rates of such reductions, President Seavey stated that the managements of various utilities could greatly improve public relations by substantial reductions in their salaries at this time.

He also suggested that all utility companies ought to reduce their dividends on common stock to a 6 per cent basis as a temporary emergency measure.

President Seavey concluded his testimony before the committee by stating that the commission will continue its current inquiries into the rates charged by public utilities irrespective of any action by the state legislature on the measure proposing increase in taxes on public utilities.

Farmers Refuse Voluntary Power Rate Reduction

THE Joaquin Light and Power Corporation on March 15th refused to grant agricultural power users in the San Joaquin valley an emergency reduction of 25 per cent in their power rates for the 1933 season. It stated that a proceeding before the California commission would be necessary if the subject is to be opened again, according to a news item in the Fresno *Bee-Republican*.

As a result, a boycott of the San Joaquin Light and Power Corporation was urged by 400 power users who attended the mass meeting on March 17th. Resolutions passed by the group, which included representatives from all sections of the San Joaquin valley, called for a valley-wide boycott of the company; substitution of natural gas or Diesel engines to power pumps; and a campaign to secure Federal funds to purchase the engines.

Connecticut

Street Lights Discontinued for Economy

ELIMINATION of from 40 to 45 per cent of the street lighting in New Britain was included in steps which will result in drastic retrenchment of lighting in the center of the city, according to a news item in the New Britain *Herald*. The board of public works has drawn up a program listing the locations of the lights to be extinguished. The city has made an unsuccessful effort to obtain a rate reduction from the Connecticut Light and Power Company, but the company has stated that it is unable to make any concessions at this time.

Faced with the necessity of providing street lighting with approximately one half of the money usually available resulting from strict economy in planning the city's budget for the current year, officials of the public works department have concluded that the only solution of the problem is to eliminate more than 1,000 street lights in all parts of the city.

Commission Investigation Urged in Legislature

A HARTFORD dispatch to the Washington (D. C.) *Daily News* stated that the establishment of a commission to investigate Connecticut public utility companies "which would be neither a fishing nor a whitewashing expedition" was urged before the legislature judiciary committee by Professor Richard Joyce Smith of Yale Law School. Professor Smith represented Governor Wilbur C. Cross on behalf of two bills concerning utility regulations which are being considered by the committee.

District of Columbia

Test of Nickel Fare for Short Hauls Urged

ADOPTION of a 5-cent fare for a trial period on a number of street car lines making short trips was suggested to the Capital Traction Company and to the Washington Railway & Electric Company on March 16th by the public utilities commission. The proposal is a move designed to increase the use of street cars, which has been dwindling in recent years due to competition of private automobiles, the flood of cheap taxicabs, popular use of busses and other causes, according to a news item in the Washington *Star*.

While not acting formally on the 5-cent fare plan, the commission drafted a memorandum suggesting to the car companies the adoption of such a system during nonrush hours on short-haul lines which operate within a radius of about two miles from the downtown section.

Meters for Cabs Up to Congress

THE question of whether the public utilities commission may be permitted to enforce an order requiring installation of meters on the taxicabs of Washington is tied into the new District fund bill as sent on March 27th to Congress by the Budget Bureau. It was revealed in a study of the measure at the District building that the bureau proposal would leave with Congress final determination of the question of metering the cabs, but that the proposed measure does not carry an absolute prohibition against meters such as exists in the appropriation act for the current fiscal year.

Georgia

City Official Not Content with Rate Cut

SUBSTITUTION of a minimum charge of $1 for the $1 service charge on monthly electric bills is merely a continuation of existing charges under a different name, in the opinion of Dewey L. Johnson, Atlanta superintendent of electrical affairs. Power company officials and the public service commission, however, stated on March 25th that the new rate would take about half a million dollars annually from the power company.

New rates for domestic and industrial consumers and rural lines were effective April 1st, while the new rates for commercial consumers were to be effective May 1st.

Mr. Johnson proposed the organization of a utility consumers league to force substantial rate reductions by assembly of facts in such matters.

Indiana

Governor and New Commission Pledge Rate Changes

A POLICY of immediate hearings on all petitions for utility rate reductions was announced for the new public service commission on March 27th by Governor Paul V. McNutt, according to a news dispatch of the Indianapolis *Star* on March 28th. This plan was set out in a letter to Orie Parker, South Bend attorney, who had complained to the governor that a delegation from that city was intensely dissatisfied "by the apparent unwillingness of the new commission to give prompt hearing of applications for rate reductions."

In his reply the governor stated:

"It is my earnest desire that applications for rate reductions receive a prompt hearing. I know that this desire is shared by all of the members of the commission. For this reason I was greatly surprised by your statement concerning 'the apparent unwillingness of the new commission,' a group of men in whom I have every confidence."

Further progress in the "new deal" for rate reductions now under way with the new commission named by Governor McNutt was announced on March 28th by Chairman Perry McCart, according to the Indianapolis *Times*. It is the stand taken by the commission that future rate schedules, proposed by the big utility set-ups, will secure commission approval only if decreases and no increases are included.

It was pointed out that for several months past, it has been the practice of certain utilities to bring in new schedules consisting of both decreased and increased rates. Announced as "having been agreed upon by the towns and cities involved," such proposals received approval of the commission without investigation and hearing. This precedent, followed by the former commission, will no longer be obeyed, Chairman McCart asserted. He pointed out that the commissioners are ready to accept only rate decreases and make them effective at once. He expects such a schedule to be submitted by a number of utilities within the next few weeks.

An announcement in the Indianapolis *Times* of March 23rd stated that the Indiana Bell Telephone Company officials would be asked to reduce rates and toll charges in Indianapolis and major cities of the state or face reduction orders within the near future by the state commission.

Meanwhile, the Indianapolis *News* carried stories of statewide protest against alleged excessive utility rates. In its edition of March 23, 1933, the *News* gave the following list of cities and rural communities which have been organizing movements for lower utility rates: South Bend-Mishawaka Civic Planning Association, the cities of Terre Haute, Rochester, Plymouth, Valparaiso, North Liberty, Sullivan, Hammond, Greentown, Galveston, Brookville, Clinton, Mt. Vernon, Portland, Milroy, Winamac, and approximately 140 smaller towns.

News items and editorials which have been appearing in the Indianapolis *News* particularly criticize alleged reductions of utility rates because of the smallness or obscurity of the towns affected. Announced rate reductions in such small centers as Spikerville, Bakers Corner, Perkinsville, Radnor, Greetingsville, Strawtown, Hortonville, Boxley, and Darwin were listed as examples in point.

Contract Motor Carriers to Be Regulated

CONTRACT carriers are made subject to the public service commission under an act of the legislature (H. 125) which became a law without the signature of the governor, according to information available at the office of the secretary of state. The act provides that the commission may prescribe rules and regulations as to operations and shall fix minimum rates and fares to be collected by contract carriers, which charges shall not be less than those prescribed for common or certified carriers giving substantially the same service. Contract carriers are required to secure permits from the commission which may refuse to issue them if existing services are held to be adequate.

Kansas

New Commission Inherits Cities Service Case

ONE of the first rate cases confronting the newly created state commission was the old Cities Service gas controversy, inherited from the now defunct public service commission. Eleven Cities Service gas distributing subsidiaries filed an application with the corporation commission on March 23rd asking it to set aside an order, made March 10th,

under which they were ordered to reduce the price paid by them for main line gas from 40 to 35 cents per thousand cubic feet. Attorneys for the applicants gave as their reasons: That the cause was finally closed and the commission had lost all jurisdiction to issue any orders; that no notice of the reduction was given; that no hearings were held; and that the order was signed by one of the commissioners who was not familiar with the case nor competent to render a decision.

Massachusetts

Legislative Committee Declines Utility Probe

ADVERSE reports were voted by legislative committees on legislation seeking to investigate the activities of the Boston Consolidated Gas Company, Edison Electric Illuminating Company of Boston, New England Telephone and Telegraph Company, Malden and Melrose Gas Company, and the Malden Electric Light Company, according to an announcement of Senator Angier L. Goodwin of Melrose, senate chairman of the legislative committee on power and light, and reported in the Boston *Globe* of March 21st.

Ex-senator Joseph J. Mulhern of Dorchester had filed three bills seeking legislation directing the state public utilities commission to initiate proceedings for a reduction in the rates of the Boston Gas, Boston Edison, and New England Telephone companies. These bills were reported "leave to withdraw."

The committee also had before it a petition of Representative Joseph Larson of Everett to investigate the Malden companies. The committee voted to report "reference to the next annual session" on the petition of Herman Comerford that the sale of steam by public service corporations be supervised by the state commission.

Michigan

Commissioner Attacks Other Members of Board

THE people of Michigan are being given a "run-around" by their own state utilities commission, and delays of justifiable suits, countenanced by the commission, have cost consumers in the Detroit area several hundred thousand dollars in the last six months, Edward T. Fitzgerald, the Detroit member of the commission, charged in a week-end statement which was published in the Detroit *Free Press* of March 27th.

Fitzgerald, who has long been at odds with the other commission members dating back to his efforts to obtain action in the Edison rate case, asserted that "the public hasn't a Chinaman's chance of getting a square deal." He cited the tactics of the commission in two cases, the Escanaba Power and Light Company case, and the case of the city of Cheboygan which attempted to obtain redress from the Michigan Public Service Company, as examples of the wearing-down policy fostered by the utilities and the commission.

Minnesota

Bill to Increase Commission's Powers Introduced in Legislature

A SWEEPING bill aimed at state regulation of electric and gas rates was introduced into the house of representatives on March 16th. Representative George W. Johnson, of Duluth, and seven other representatives were the authors of the bill which consisted of 40 pages covering the entire field of power regulation. The commission would be given the right to investigate valuations and rates, control improvements and changes, and inquire into all phases of the business of electric and gas utilities. A petition from twenty-five citizens would start an investigation.

Representatives William Witt of Belle Plaine and Fred W. Radde of Waconia advanced a simpler plan. They introduced a bill to give the railroad commission the same power of regulation over power companies which it now has over telephone companies. Representatives S. A. Stockwell of Minneapolis and George W. Rodenberg of St. Paul

announced a plan for regulatory reform. They introduced a bill to permit cities to buy or build gas systems and authorize the issuance of bonds to finance them.

Nebraska

Telephone Utility Not Opposed to Rate Inquiry

INVESTIGATION by the state railway commission into fairness of rates of the Northwestern Bell Telephone Company will not be opposed by the company, it was announced March 21st by company officials in a notification sent to Assistant Attorney General Edwin Vail at Lincoln. This assent to the inquiry paves the way for Federal Judge Munger to enter a supplemental decree modifying a Federal injunction obtained by the company in 1925, which was regarded by the state attorney general's office as a possible bar to the proposed fixing of a new schedule of rates by the Nebraska railway commission.

In their notification, the company attorneys assert the inquiry and possible changing of rates might have proceeded without modifying the original injunction, but announce the company's willingness to coöperate in airing the telephone company's rate structure. W. F. Cozad, general manager of the telephone company, expressed his confidence that a study by the commission would show that under the lowest valuation of the company's properties which the commission could hope to obtain, the earnings in Nebraska area would still fall far short of a fair return. He claimed that such earnings for 1933 would probably be in the vicinity of 1.94 per cent return.

New York

Municipal Power Plan Introduced in Legislature

RESPONSIVE to Governor Lehman's message, a bill has been introduced at Albany to enable municipalities in New York state to go into the business of supplying themselves with electric power. The action was sought by Governor Lehman to create an alternative channel for the distribution of St. Lawrence power in the event that the New York State Power Authority is unable to make satisfactory contracts with private utility companies. It is proposed to make the legislation purely permissive. Under its provision, municipalities would be permitted to operate electric plants and sell power to their residents. The bill which was introduced by Senator Dunnigan contained the following provisions (§ 150):

"The powers, functions, and duties so exercised" (by the municipalities which go into the power business) "shall not be subject to the approval or supervision of the" (public service) "commission in any respect. Rates, rentals, and charges of such service shall not be subject to the regulation of the commission."

Commenting upon the proposed legislation in the *Wall Street Journal* of April 4th, Thomas W. Woodlock, former Interstate Commerce Commissioner, pointed out that municipalities operating their own power plants would be free from any control whatever as to the charges for the current, service rendered, or the accounting. He stated that a municipality may elect either to make a "profit" from its power enterprise and thus relieve the tax budget, or it may elect to serve the community at rates which are below the cost of service and make the tax budget cover the loss. Absolute freedom of choice in this respect is clearly the purpose of the bill, according to Mr. Woodlock, and it is for the voters in each municipality to determine the choice.

Mr. Woodlock stated, however, that municipal taxpayers ought to be informed as to what the political managers of the plant are doing, and that they would not have such knowledge unless municipal accounts are presented to them in such a form as will represent the facts. He stated as follows:

"Now why should not the law enabling municipalities to go into the power business, either singly or by districts, provide that all such enterprises shall be subject to strict accounting and that they should report to the public service commission of the state in a form to be prescribed by that commission."

Mr. Woodlock pointed out that such publicity and standardized accounting would not hamper the municipality in determining its policy as to rates and taxes in any way, but would merely serve to give publicity as to how each municipal plant was being conducted.

North Carolina

Labor Chief Opposes Public Plant Bill

W. B. PLEMMONS, president of the Central Labor Union of Asheville, announced his opposition to the bill proposed by Representative W. A. Sullivan in the North Carolina legislature for city-county ownership and distribution of electric power in Buncombe county. Mr. Plemmons said that the power bill does not give any guaranty of employees continuing in service and does not guaranty any cheaper power rates.

Mr. Plemmons particularly objected to the fact that the bill had no feature of employment whatsoever, and announced that he would attempt to enlist the aid of Central Labor Union to active opposition to the bill in its entirety. Replying to Representative Sullivan's charge that he was acting in the interest of his employer, the Carolina Power and Light Company, Mr. Plemmons declared that he only represented the working people and did not feel obligated to his employer in any way; and claimed that his position with the private utility had nothing to do with his personal position in the matter. He added that if it could be shown that the power and light costs of the private utility are too high, they should be reduced.

Reduced Power Rates for High Point Citizens

A REDUCTION of more than $31,000 per year in charges for electric current to customers residing in the city of High Point was effected March 22nd when the city council adopted an ordinance establishing new schedules of charges designed to pass on the savings effected under the recent negotiated wholesale power contract with the Duke Power Company. Under the new set-up, which was effective on all bills rendered on and after April 1st, a single meter system was adopted with bracketed consumption rates making reductions to practically every customer served, with the exception of a few customers who failed to use the minimum charge amount of 75 cents worth of current per month.

Ohio

Lamps and Candles Return in Electric Rate Protest

ASSOCIATED Press dispatches published in many important papers of the Eastern United States on April 1st carried news that flickering rays of oil lamps and candles signaled a message of protest against the rates of the Windham Electric Company. Dispatches from Warren, Ohio, claimed that lanterns were used by farmers at their morning chores by 184 rural patrons of the company as they instituted their "strike" for lower charges. They claimed to represent 65 per cent of the company's customers in three townships.

Although a counter proposal of the electric company was rejected by the consumers' committee, Manager C. M. Thrasher of the company predicted that many of the 184 consumers would withdraw their shut-off orders when they receive the bills for March service, showing a reduction from the rates that caused the protest—6 cents per kilowatt hour plus a $2 a month service charge. The consumers' committee had asked a service charge of $1 a month for all customers, village and rural, and a graduated scale of 6 cents a kilowatt hour for the first 40 hours, with follow-up steps of 3 and 4 cents, respectively. Manager Thrasher said that the March bills included a $1 service charge for customers in Windham village, but retained the $2 charge for rural patrons.

Compromise Likely on Municipal Debt Limit Bill

THE Ohio senate was expected to receive a report of the conference committee on the Ward bill in which the author sought to raise to 65 per cent the vote needed for the adoption by the municipalities of all bond issues. The house adopted the bill in the form submitted by the author, but the senate amended it so that the vote needed on bond issues for municipal utilities would be cut down to 55 per cent. The house refused to concur in the amendment.

According to the Columbus *Citizen* of March 24th, the committee was to recommend that the vote needed on bond issues for municipalities would be 60 per cent, which is the same limit set for such projects under the prevailing law. The vote on all other municipal bond issues would be raised to 65 per cent. The assembly was expected to agree to the compromise.

Nickel Bus Fare Trial Urged for Canton

ADVOCATING a reduction of fare as a possible means of increasing patronage, Mayor James Seccombe, of Canton, sent a letter on March 28th to the Canton Motor Coach, Inc., recommending that its rates be lowered to 5 cents a passenger for a 30 or 60-day period as an experiment. The mayor expressed belief that thousands of persons in the city who are not riding at present would patronize this mode of transportation if the lower rate of fare were adopted. At the present time cash fares are 7 cents per passenger with eight tickets for 50 cents.

Oregon

Mayor Wages War on Utilities

MAYOR W. E. Mahoney of Klamath Falls continued his fight against utilities which was one of the planks upon which he was elected when he was granted a hearing on April 11th by state Utilities Commissioner Thomas on his demand for a 30 per cent reduction in rates charged by the California-Oregon Power Company. Mayor Mahoney asked for an investigation of the rate structures and value of the company's properties, as well as its alleged monopoly on power sites in the district.

He stated, in a news item to the Portland *News Telegram*, that in the event his move for lower rates is unsuccessful he will establish a municipally owned plant for the city. Since taking office in January, Mayor Mahoney has succeeded in imposing a gross earning tax on all utilities serving the city of Klamath Falls, thereby increasing the city's revenue by $25,000 to wipe out a previous deficit in the general fund of $23,500.

Pennsylvania

Gas Rate Fight Looms in Pittsburgh Area

A MOVE for lower gas rates, started by the Utilities League for Municipalities on behalf of thirty-five communities in the vicinity of Pittsburgh, was given an impetus by a meeting of the board in charge of the utility controversy at the William Penn Hotel on March 29th. The meeting expressed its dissatisfaction with rate cuts offered by the three companies involved: Manufacturers Light and Heat Company, the Equitable Gas Company, and the Peoples Natural Gas Company. A formal complaint was filed with the public service commission alleging excessive rate charges by one of the companies "to recoup losses consequent upon improvement contracts."

The city council of Washington authorized the filing of the complaint and petition, and all the other municipalities concerned will be asked to join in the action as intervenors.

Tennessee

Opposition to Abolition of Commission Developed

MEMBERS of the legislature from small communities and rural districts have declared their opposition to the measure introduced by Representative J. E. Gervin, of Knox county, which would completely abolish the state railroad and public utilities commission and leave rate regulation to the various communities. The preamble of Representative Gervin's bill declared that for the past few years the commission has operated in the interest of the utilities and to the detriment of the people.

Members opposing the bill, however, feel that smaller communities would be left without regulatory protection if the commission were completely abolished. An amendment was being considered by Representative W. F. Monogan, of Washington county, which would establish out of the present utility division of the commission an investigatory unit without any regulatory powers. While the large cities, it was pointed out by those who intend to oppose Representative Gervin's bill, can afford to employ experts for rate cases and get their own information, this could not be afforded by rural districts or small communities. Forrest Allen, writing in the Memphis *Press-Scimitar*, declared that Representative Gervin's bill had a fair chance of passing in the house.

Texas

Debate on Regulatory Commission Bill Started

DEBATE on the bill to establish a combination public utilities and natural resources commission was started in the Texas house of representatives on March 28th, according to an Austin dispatch in Fort Worth *Star Telegram*. The bill was offered as a substitute for one that would provide for establishment of a commission to regulate utilities only.

The proposal to form a combination commission originated in a group of members opposed to the practices observed by the present railroad commission, which is the present oil and gas conservation agency in the East Texas oil field. Representative R. J. Long of Wichita Falls, who has been particularly critical of the commission, explained the provisions of the bill. The present Texas commission does not have general jurisdiction over utilities other than railroads, motor carriers, and natural gas outside of municipalities.

Virginia

Norfolk Gas Report Leads to Rate Cut

THE report of Allen J. Saville and his associates on the Norfolk gas department of the Virginia Electric and Power Company was received with considerable interest in regulatory circles throughout the state, not only because of the specific findings of the Saville report, but because of the methods used by Mr. Saville in making his computations.

A valuation of the company's property, as agreed upon by the city of Norfolk and the owners in 1920, was used as a basis. Mr. Saville's task was to see what additions had been made and what deductions were properly chargeable since that time. His conclusion was that the property valued at $2,253,000 in 1920 is now worth $4,097,000 for rate-making purposes, although it is carried on the books of the company at $5,205,000. The figure was reached by what is known as an "historical valuation," that is, a check of the money actually spent on the utility since the agreed valuation of 1920. Besides a rather liberal allowance for the increment in the value of the company's real estate prior to the year 1920, Mr. Saville included a "going concern" value of 15 per cent of the actual investment.

Mr. Saville found, on the adjusted valuation, that the company has had a net return on the property during the last five years ranging from 8.8 to 9.8 per cent. As an immediate result of this finding, the utility company went before the corporation commission on April 5th, at the same time the report was filed, and lowered its rates.

West Virginia

Governor Calls for Special Utility Legislation

THE utility rate investigating committee of the house of representatives expressed "dissatisfaction" over the views of Governor H. G. Kump regarding utility legislation during the special session as requested by the committee. The committee had urged the governor to include in his call for the special session consideration of wide revision of utility laws. Governor Kump said "it is useless to talk about" studying additional subjects at the special session until there are some provisions made for the financial structure and government functions of the state.

The governor referred to the message accompanying his call in which he said that "after disposition of matters included in the proclamation, a question of extending the extraordinary session might be considered so that members would have further opportunity to introduce measures which might well have been, but for some reason were not, disposed of during the regular session."

Chairman Rush D. Holt in charge of the legislative investigation said: "I am very much dissatisfied with the governor's reply because I consider the utility problem of equal importance with any other before the state."

The Latest Utility Rulings

Supreme Court Rules on State Commission Powers

On April 10th, the Supreme Court of the United States handed down three decisions bearing upon the regulatory powers of the state commissions. In two of these decisions which will prove of more than passing regulatory importance, the regulatory powers contended for by the Montana and Ohio commissions, respectively, were sustained. In the third decision, the authority of the New York Transit Commission was held to be subordinate to that of the Interstate Commerce Commission with respect to the railroad operations in the Long Island tunnel.

The Montana case involved an order of the Montana Public Service Commission prescribing a minimum as distinguished from a maximum rate to be charged for natural gas by privately owned public utilities in the city of Shelby. The case, which was once before remanded by the Supreme Court to the Federal district court for more specific findings of fact and law, expressly reversed the Federal district court and affirmed the power of the Montana commission to fix minimum rates, in order to prevent rate wars. The Great Northern Utilities Company, which was the appellee, furnished gas under a nonexclusive franchise since 1923. In 1928, the Citizens Gas Company commenced competitive operations at a reduced rate. The first company replied with a further reduction which caused the Montana commission to investigate the situation. The commission found that the attempted competitive rate was not compensatory and directed both companies to furnish service at equal rates, taking the position that such rate wars involve economic waste ultimately detrimental to public interest.

The Federal district court held that the commission order deprived the Great Northern Utilities Company of its constitutional property rights, implying that the right to lower rates for competitive purposes in order to protect its utility business was a property right guaranteed by the Fourteenth Amendment. The Supreme Court held that the commission order did not deprive the first utility of its property in violation of the Constitution. It was further held that the due process clause does not assure to a public utility the right under all circumstances to deny its competitor by an unrestrained cutting of rates. It was said that the constitutional clause invoked "does not protect public utilities against such business hazards."

The Ohio case involved an order of the commission of that state denying an application of a motor carrier operating between Michigan and Ohio terminals for a certificate contemplating a certain route through Ohio which the commission found was already so badly congested by traffic that further operations would impair public safety. The carrier appealed on the ground that the commission had no authority to deny interstate carriers the right to operate. The supreme court of Ohio sustained the commission and the United States Supreme Court has now sustained both the state court and the Ohio commission. Mr. Justice Brandeis in his opinion pointed out that the commission had not denied the interstate carrier the right to operate in Ohio, but merely the right to operate over a specific route over which, as the evidence indicated, the commission properly found that additional common carrier operations would create an unwarranted traffic hazard. It was observed that the commission had not denied the right of the

carrier for an alternative route over less congested highways.

Montana Public Service Commission v. Great Northern Utilities Co. (*No. 627.*); *Bradley v. Ohio Public Utilities Commission* (*No. 395.*); *New York Transit Commission v. United State et al.* (*No. 535.*)

The Constitutionality of the Federal Water Power Act Sustained

DAILY press dispatches of March 30th hailed as a major victory for the Federal Power Commission the decision of Federal District Court Judge Luther B. Way dismissing a bill in equity filed by the Appalachian Electric Power Company to restrain the commission from interfering with its proposed hydroelectric development on the New river in Virginia. A close scrutiny of Judge Way's opinion, however, discloses that the decision is not entirely a complete vindication of the Federal Water Power Act and all its clauses, but is probably only a confirmation of the acts of the commission so far attempted. The Commission in this case was attempting to require the company to obtain a "major" or standard form license (under which it would submit to the general jurisdiction of the commission) before proceeding with the actual construction of its contemplated power plant.

There were a number of contentions and counter contentions made in the course of the argument, but the three following points commanded most attention:

1. Is the New river in fact navigable or non-navigable?

2. Does Congress (acting through the agency of the commission) have authority to regulate power projects on non-navigable streams?

3. Is the Federal Water Power Act constitutional in so far as it purports to give the commission power to regulate hydro structures from the aspect of electric power generation, as well as navigable control?

The court decided the first point in the negative, based on evidence of opinions of various agencies of the government itself to the effect that the New river is not in fact navigable, but this ruling becomes of subordinate importance in view of the court's ruling on the second point. On this point the court held that where non-navigable streams empty into or affect the flow of navigable streams, the constitutional power of Congress to protect and to preserve navigation extends to such non-navigable streams. In such a class, the court found, is the New river, emptying as it does into the Kanawha river which is an indisputably navigable stream.

It is the third point, however, which is most interesting and most debatable. Mr. Newton D. Baker, counsel for the power company had urged in the course of his argument that, granting constitutional power of Congress to regulate streams, navigable or otherwise, in the interest of protecting navigation, such authority did not extend to the limits attempted by the Federal Water Power Act, which would give the commission power to regulate the rates charged for energy generated from the flowing stream and to regulate the service, securities, and accounting of the parties generating it. The court felt, however, that "the fact that purposes other than navigation will also be served could not invalidate the exercise of the authority conferred." The opinion found that the proprietary right of the power company as owner of the banks of the New river "is impressed with a public servitude or interest for the purpose of protecting, preserving, and even enlarging the navigable capacity of the Kanawha river." Since, therefore, the erection of the proposed power plant would unquestionably affect the flow of the

Kanawha and its tributary, the New river, it was felt that the commission's jurisdiction had solid constitutional ground upon which to require even further regulation, not directly related to navigation, as a conditional prerequisite to the granting of the necessary Federal license. In other words, if the commission may constitutionally prevent power plant development without a Federal license, it may grant such licenses upon any reasonable condition it sees fit to impose. The attempted regulation, therefore, was not a "bald attempt" to regulate a manufacturing business under the disguise of navigation regulation, but rather a bona fide attempt to regulate a project in the interest of preserving navigation. The opinion concluded:

> "If the premise that the regulation proposed is of a subject in which the United States has a substantial interest, namely in the power inherent in the flow of the stream is correct, it would seem to follow that the United States is not without authority or right, as a condition to the granting of the permission to construct the project, in taking the position that plaintiff through the permit would obtain from the United States valuable rights, benefits, and advantages to which it is otherwise not entitled.
>
> "Of course, if the power of the United States over the flow of the stream is wholly of a negative or a prohibitory character, alien to any proprietary interest or right in the flow of the stream then the case is different. But it is not readily perceived how the United States may well have such far-reaching power to preserve and even enlarge navigable capacity in the interest of interstate and foreign commerce entirely separate and apart from a right or servitude in the power of the stream itself. And if the United States does have a substantial right in the power of the stream although limited to specified purposes, it is not devoid of a right to specify the terms upon which that power may be used for private purposes.
>
> "While a number of the proposed regulations are probably far-reaching in their effect and may, at least at first blush, appear to be radical in their nature, this court cannot say on the case presented that they do not bear positive relation to the regulation of interstate and foreign commerce or that the act of Congress authorizing them is unconstitutional and void."

It will be observed, however, from the quoted passage that the court specifically restricted its decision to the powers which the commission had actually attempted to exercise, as indicated by the evidence in the case at bar. The commission had not actually attempted to regulate the rates or security issues of the applicant and, it would seem, further judicial opinion will be necessary to clarify the constitutionality of the latter situation if, as, and when it arises. *Appalachian Electric Power Co. v. Federal Power Commission. Equity No. 494.*

Stevedore and Longshoremen Service Declared Public Utilities

UNDER the stress of economic forces, the list of industries subject to governmental regulation is being increased. A recent decision of the California commission declaring the ancient calling of stevedores and carloaders to be "common carriers" subject to commission regulation is not, however, the result of such economic pressure but rather an interpretative extension of the California Public Utilities Act. According to this ruling, the closing sentence of § 2 (dd) of the Public Utilities Act shows the legislative intent to bring within the scope of commission regulation intermediate operations incidental to or a part of a public utility or common carrier service. Car loading and unloading and the accessorial services attendant thereupon are clearly such intermediate services, said the commission, and are subject to regulatory jurisdiction. The commission stated that the services of car loading and un-

loading are commonly carried on as a unit and embrace the handling of freight from point of rest on the wharf into the car or from the car to a point of rest on the wharf, respectively; and that the term "car loading" as used in the statute includes both car loading and unloading, since a car loader performs both services.

Likewise, it was said that stevedoring ordinarily embraces the handling of freight from point of rest on the wharf or dock into the vessel and discharging from vessel to point of rest on the dock or wharf, and is usually performed by or under control of the various steamship companies. It was observed further that car unloaders and stevedoring companies held themselves out to the public to perform for compensation a service incidental to or connected with the transportation of property and are, therefore, common carriers within the term of the Public Utilities Act. Various loading and stevedoring companies were required, on the commission's own motion, to file tariff schedules with the commission. *Re American-Hawaiian Steamship Co. et al. (Decision No. 25679, Case No. 3323).*

New York Utility Ordered to Cut Book Value

AFTER investigation on its own motion the New York commission has directed the New York State Electric and Gas Corporation to correct its accounts and records to correspond with commission findings of book value for various properties which the commission believed were originally bought from outsiders at not more than $2,275,000, but which were placed on the books of the New York State Electric and Gas Corporation at $6,500,000. According to the commission, it was developed at eight hearings that the $6,500,000 was to "cover a purported sale to the New York State Electric and Gas Corporation of certain parcels of land and water rights, consisting of hydroelectric plants and undeveloped sites located on the Ausable, Battenkill, Wallkill, and Chateaugay rivers." The commission reported as follows:

> "The evidence offered with reference to the cost of the Associated System of each of the properties showed that the amounts representing the cost of the properties sold to the New York State Electric and Gas Corporation in December, 1930, were not in excess of:
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> |---|---|
> | Wallkill river property | $547,291 |
> | Ausable Forks-Clack Brook properties | 1,592,700 |
> | Metowee river property | 65,735 |
> | Rexleigh property | 32,506 |
> | Brockett, Smith & Peck properties | 29,436 |
> | O'Brien property | 4,000 |
>
> "That sum ($2,271,668) includes all moneys expended for improvements to the properties prior to the transfer to New York State Electric and Gas Corporation and all expenses which had to do with the purchase by any of the associated companies which were shown to have been involved in any manner in any of the transfers.
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> "It is significant that the New York State Electric and Gas Corporation did not apply to this commission for permission to acquire these properties or to distribute the cost of the same on its corporate books, as it was required to do by the uniform system of accounts."

Re New York State Electric & Gas Corp.

Commission Claims Jurisdiction over Utility Wages

OF considerable regulatory importance was the decision of the New York Public Service Commission, handed down March 14th, claiming juris-

diction, at least of a limited nature, over the wages paid by utilities to their employees. The ruling resulted from formal complaints filed by thirty persons claiming to be customers of the Brooklyn Edison Company. The principal matters complained of related to alleged acts and practices of the company in connection with the employment, payment, and discharge of its employees. The complaint further alleged that, by reason of the company's industrial relations' policy, the continuity of its electrical service was in danger. The company answered to the effect that the commission had, by virtue of New York statutes, no jurisdiction over the premises.

The commission conceded that it had no jurisdiction over the labor policies of the Brooklyn Edison or of any other utility unless and until it could be "shown that such policies and practices directly affect the service being furnished or the rates being charged." The commission further determined that the case at bar warranted further investigation by the commission. The opinion stated:

> "In this proceeding we are of opinion that the commission has jurisdiction to continue its public hearings and make such investigations as it may deem proper into the methods employed by this corporation in manufacturing, distributing, and supplying electric current for light, heat, and power and for transmitting the same, so as to enable it to ascertain the facts underlying the allegations in the complaint as to service and rates, and so as to finally determine if it should exercise any powers conferred upon it by law relative to such service and rates of the Brooklyn Edison Company."

Re Brooklyn Edison Co. Inc. (*Case No. 7699.*)

Reproduction Cost Appraisal at Depression Prices Not Permitted

THE reproduction cost appraisal of a gas utility's property value as of 1928 was preferred to a new appraisal reflecting current commodity prices by the Vermont commission in a recent rate reduction proceedings involving the gas department of the Green Mountain Power Corporation. The commission's opinion stated on that point:

> "In 1928 the properties of Green Mountain Power Corporation were valued under order of this commission at great expense to the corporation. This valuation was made the basis of the commission's judgment in the very important matter of the issue of securities. Since this valuation necessary additions have been made to petitionee's property at the prevailing prices. The commission feels that to disregard the previous valuation, which is but four years old, and disregard the actual investments in the plant since, and to make a *de novo* valuation based on prices which have very little probability of continuing at present levels would be unjust to the company and the holders of its securities. Such a practice vitiates the whole scheme of utility valuation and makes rates and values perpetually contingent upon commodity prices rather than on the fair and equitable values and investments in the utilities. From a consideration of all the evidence the commission finds the fair value of the property of the gas department, used and useful in the conduct of its business to be $952,000."

The commission found, however, that the record of earned return made by the company, varying from 8.6 per cent in 1926 to 11.87 per cent in 1932, and reaching a peak of 12.42 per cent in 1929, was sufficient to warrant a rate reduction. Because of the drastic economies put into effect by the company, as well as other evidence of operating efficiency, the commission felt that some consideration should be allowed to the utility's management in fixing the new rate of return. Accordingly a reduced schedule of rates calculated to produce a return of approximately 8.8 per cent, prepared by the company as an aid to the commission, was modified by somewhat further reductions in a substitute